



California Regulatory Notice Register

REGISTER 2003, NO. 40-Z

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OCTOBER 3, 2003

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

MULTI-COUNTY:

North Central Counties Consortium

A written comment period has been established commencing on **October 3, 2003** and closing on **November 17, 2003**. Written comments should be directed to the Fair Political Practices Commission, Attention Teri Rindahl, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review; unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any

written comments must be received no later than **November 17, 2003**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Teri Rindahl, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Teri Rindahl, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY:

Department of Corporations

A written comment period has been established commencing on **October 3, 2003** and closing on **November 17, 2003**. Written comments should be directed to the Fair Political Practices Commission, Attention **Trish Mayer**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice. Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **November 17, 2003**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were

mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Trish Mayer**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Trish Mayer**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the amended conflict of interest codes of the following agencies:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY:

State Water Project Contractors Authority

A written comment period has been established commencing on **October 3, 2003**, and closing on **November 17, 2003**. Written comments should be directed to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or her own motion or at the interest of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than **November 17, 2003**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above

conflict of interest code shall approve codes as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 5. SUPERINTENDENT OF PUBLIC INSTRUCTION

NOTICE OF PROPOSED RULEMAKING

Admissions Criteria for the California Schools for the Deaf and Blind

The State Superintendent of Public Instruction (Superintendent) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The Superintendent will hold a public hearing starting at 10:00 a.m. on December 2, 2003 at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Superintendent requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Superintendent requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period closes at **5:00 p.m. on November 19, 2003**. The Superintendent will only consider written comments received by the Regulations Adoption Coordinator (in

addition to those comments received at the public hearing). Written comments for the Superintendent's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
Telephone: (916) 319-0641
E-mail: dstrain@cde.ca.gov

AUTHORITY AND REFERENCE

Authority: 5 CCR Section 3030(a); Sections 56350, 56352, 59001, 59020, 59101, 59102, and 59120, Education Code.

Reference: 5 CCR Section 3030(d); Sections 56350, 56352, 59001, 59020, and 59120, Education Code; 34 CFR Section 300.7 (c)(3), (c)(5), and (c)(13).

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The State Superintendent of Public Instruction (SPI) proposes to adopt the regulations on Admissions Criteria for the California Schools for the Deaf and Blind. The SPI proposes to add Sections 17661, 17662, 17663, 17664, 17665 of Chapter 18, Subchapter 2, Article 1, and Sections 17666, 17667, 17668, 17669 of Chapter 18, Subchapter 2, Article 2.

Education Code section 59020 gives the SPI the authority to establish criteria for admission to the State Special Schools (Schools for the Deaf and Blind). The criteria establish which students should be admitted to the State Special Schools based on their ability to be served appropriately by the programs offered at the schools.

The State Special Schools are part of the public school system of the state and have for their purpose the education of the Deaf and Blind who, because of their severe hearing and severe sensory loss and educational needs, cannot be provided an appropriate education in the regular public schools (Education Code section 59001). The State Special Schools do not replace the role of the local school districts that have the responsibility to serve all students within their boundaries (Education Code section 48200). Clear admissions standards are necessary because only those students that can be appropriately served by the State Special Schools should be admitted to its instructional and residential programs.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impact on a representative private person or business: The Superintendent is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: The superintendent has made an initial determination that the proposed regulatory action would not affect housing costs.

Affect on small businesses: The proposed regulations will have no affect on small business because they only apply to Local Education Agencies.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Superintendent must determine that no reasonable alternative considered by the Superintendent or that has otherwise been identified and brought to the attention of the Superintendent would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Superintendent invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Ron Kadish, Director
California Department of Education
State Special Schools
1430 N Street, Second Floor
Sacramento, California 95814
Telephone (916) 327-3850

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0584.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the Superintendent may adopt the proposed regulations substantially as described in this notice. If the Superintendent makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the Superintendent adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The Regulations Adoption Coordinator will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

TITLE 8. INDUSTRIAL MEDICAL COUNCIL

NOTICE OF PROPOSED RULEMAKING

The Industrial Medical Council ("IMC") proposes to amend regulations governing the Qualified Medical Evaluator program. The existing regulations are found in Chapter 1, commencing with Section 1, of Title 8 of the California Code of Regulations. The proposed amendments will clarify existing regulations and make the Qualified Medical Evaluator program operate more effectively. The IMC proposes to adopt these amendments and these new regulations after considering all comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD, AGENCY CONTACTS

Written Comment Period

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the IMC at the addresses listed below. The written comment period closes on November 17, 2003, at 5:00 p.m., and the IMC will consider only those comments which are received by that deadline. Written comments may be submitted by letter, facsimile, or e-mail by as follows (Comments by email are preferred, and will save the agency personnel time and taxpayer dollars in responding to them):

Industrial Medical Council, Regulations
P.O.B. 8888
San Francisco, CA 94128
Facsimile: (650) 737-2637
E-mail: imcrules@hq.dir.ca.gov

Written comments may also be submitted in person at the offices of the IMC at the following street address:

Industrial Medical Council
395 Oyster Point Blvd, Suite 102
South San Francisco, California

All written comments will be given consideration by the IMC, regardless of which mode of delivery is chosen.

Agency Contacts

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, for the Initial Statement of Reasons, and for any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Annadessa Gregorio
Industrial Medical Council
P.O.B. 8888
San Francisco, CA 94128-8888
(650) 737-2700

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulations, or in the event the contact person is unavailable, inquiries should be directed to:

Richard Starkeson
Industrial Medical Council
P.O.B. 8888
San Francisco, CA 94128-8888
(650) 737-2700

The IMC will hold a public hearing on the regulations if, no later than 15 days before the end of the written comment period, it receives a written request for a public hearing from any interested person or his or her authorized representative.

AUTHORITY AND REFERENCE

AUTHORITY: Labor Code sections 59, 139, 139.2

REFERENCE: Labor Code Sections 139, 139.2, 4061, 4062

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Overview

The IMC is charged under Labor Code section 139 et seq., with administering the Qualified Medical Evaluator program in workers compensation. Qualified Medical Evaluators (QME's) examine employees for workers compensation injury claims, and make evaluations of disability upon which Workers Compensation Appeals Board decisions may be based. In most cases, for unrepresented employees, the reports of a QME and of treating physicians are the only medical evaluations used in determining disability.

The Qualified Medical Evaluator regulations have not been amended since 1999. It has since come to the attention of the IMC that there are problems with some regulations, some appear to be ambiguous, and some new regulations are necessary to effectively carry out the Qualified Medical Evaluator program mandated by Labor Code section 139

The Industrial Medical Council is proposing to amend the Qualified Medical Evaluator regulations and reorganize some of the regulations, so that they are more understandable.

Information Digest

The IMC proposes to amend regulations found in Chapter 1, sections 1 through 158, Title 8 of the California Code of Regulations and adopt new regulations.

The proposals are a combination of substantive and non-substantive changes.

The IMC did not consider any alternatives to any of the proposed changes to the existing regulations. These regulations have been in their current form since 1999, and amendments are necessary to remove some ambiguities and eliminate problems in Qualified Medical Evaluator program administration.

The IMC proposes to amend sections 1, 10, 11, 11.5, 14, 15, 17, 18, 19, 20, 30, 31, 31.5, 32, 33, 34, 35, 35.5, 36, 38, 39, 39, 40, 41, 49, 49.2, 49.4, 49.6, 49.8, 49.9, 50, 52, 60, 61, 62, 156, 157, and 158, and to adopt sections 21, 33.5, 58 and 63.

In all Sections, wherever they appeared, the phrase ***injured worker*** and the word ***worker*** were replaced by the word ***employee***, (in both singular and plural forms) for clarity and consistency. The Labor Code uses the term employee to refer to the injured worker throughout the sections dealing with workers' compensation. The regulations had used both employee and injured worker at various points, without any reason for the distinction. If a Section has no other proposed changes, it is not further mentioned in this digest.

Section 1.

This is a section of definitions. It is reordered and subsections are re-lettered, so that all items are listed alphabetically. There are minor changes to the definitions of the terms **AME**, **Comprehensive Medical-Legal Evaluation**, Continuing Education Program, **Direct Medical Treatment**, **Provider**, **Evaluator**, **Qualified Medical Evaluator**, **Rebuttal examination**, **Course**, **Treatment Guideline**, **Employer**. New terms **QME** and **QME Competency Examination for Acupuncturists** were defined, the term QME being moved from Section 49.

Section 10.

This section provides for the appointment process for a QME. This section was amended to add that a physician who is on probation from the physician's licensing board or who has been convicted of a crime may be denied appointment. Although this has been the past practice, there was no specific regulation authorizing it. It also would provide that physicians whose license is currently suspended may not be appointed, and that physicians must be of good moral character to be appointed. Physicians whose appointment had been revoked in the past would have to

establish their rehabilitation before being appointed. Physicians who had resigned or did not renew their appointment while under investigation or accusation, would be subject to the continuation of the investigation or accusation if they reapplied for appointment, and would not be reappointed if the previously filed accusation were proven unless they established their rehabilitation.

Section 11.

This section provides for the academic and professional qualifications for appointment as a QME. There are several minor grammatical changes, and changes in language for clarity. The term **osteopathic equivalent** is changed to **Osteopathic Postgraduate Training Institute**. Applicants for appointment, who were on probation or had restricted licenses, would have to state the nature of the restrictions on their application for appointment. An applicant who was suspected of cheating on the QME examination may be disqualified from the examination, and if the charge were substantiated, would be barred from taking the exam for at least two years thereafter. Acupuncturists would have to pass the newly defined QME Competency Examination for acupuncturists.

Section 11.

This section provides for the Disability Evaluation Report Writing Course. For clarity, to distinguish from other courses, the word **course** is modified by the words **report writing**. Only report writing courses offered by approved education providers would be qualified for appointment purposes. The part of the section describing the process of approving education providers is reworded for clarity. Many of the paragraphs of the section were re-lettered because of rewriting of the first paragraph for clarity.

Section 14.

This section provides for the academic and professional qualifications for appointment of chiropractors as QME's. The amendment specifies that courses will be approved for a two year period, and that no certification in workers compensation evaluation shall qualify unless subsequent to the licensing of the chiropractor.

Section 15.

This section specifies the basis for appointment as a retired or teaching physician. The section is reworded for clarity. The number of hours of practice allowed per week is increased from less than ten to no more than fifteen. Paragraph (d) providing for physicians who have retired from practice due to a disability is deleted. The time period during which a physician is to notify the IMC of a change in status is specified at 30 days. Currently, a physician who had a fulltime forensic practice during the three years immediately

preceding the time of application would be ineligible for appointment under this section. The reference to the to the full time forensic practice during the three years immediately preceding the time of application would be deleted.

Section 17.

This section provides for a fee schedule for QME's. A typographical error is corrected.

Section 18.

This section provides for the time at which fees are to be paid by QME's. The section was rewritten for clarity, deleting unnecessary language. A requirement that QME's whose status had lapsed for more than two years would have to meet current requirements for eligibility and retake the report writing class was added.

Section 19.

This section provides for issuance of QME certificates. The first paragraph of this section was rewritten for clarity without substantive change. The second paragraph added a prohibition for a non-QME physician to display a QME certificate.

Section 20.

This section establishes time periods for the IMC to process applications. A new paragraph added that if there were an issue of whether the applicant met all the qualifications, the application would be deemed incomplete pending investigation.

Section 21.

This new section provides for examinations and applications. The IMC is to give notice of the examination at least 60 calendar days in advance. Applicants must have submitted completed forms at least 30 days before the examination. The IMC is to inform the applicant whether the applicant will be allowed to take the examination within 15 days of receiving a completed application and fee.

Section 30.

This section provides a system for unrepresented employees to request a panel of QME's, which the employee may do under Labor Code Sections 4061 or 4062. The amendment makes clear that the claims examiner or employer is obliged to complete sections one, two, and three of the form (prescribed in Section 106), and that only the employee may complete section four of the form, send it to the IMC, or select a QME specialty. The amendment also requires the employee to furnish his social security number on the form. Currently, when the IMC receives an incomplete form, it is required to return it with an explanation of why a QME panel selection cannot be made. The amendment would add the requirement that the IMC also notify the other party in the proceeding. The

amendment would also add the provision that for employees who never resided in California, the geographic area of QME panel selection shall be by agreement between the employee and employer, or if no agreement, it shall be determined by the place of business of the employer where the employee had been employed.

Section 31

This section provides for the process of selecting a QME from a panel of QME's. The section now provides for selection at random from the *appropriate* specialty. The word *appropriate* is deleted. The amendment would add that the form listing QME's would now contain information on the QME's education, training, years of practice, and probationary status, and that probationary status would be noted in a footnote, with a direction to the employee to contact the IMC for further information regarding the probation, if any. Paragraph (d) is amended by substituting the phrase *as defined in* for the phrase and *who has provided treatment in accordance with*. The sentence calling for disqualification of a QME is rephrased for clarity.

Section 31.5

This section provides reasons and methods for replacement of a QME panel member. The provision which would allow replacement of a physician on the request of the employee if he were a member of the same group practice as another member on the panel is changed to allow replacement at the request of either party. QME's are to provide reports within certain timeframes. The amendment would add a provision which would allow disqualification on the request of the employee if the physician failed to complete a report within the established timeframes. The section provides that any party may request replacement of a panel QME if the employees treating physician is on the panel. The amendment would also allow replacement if the employee's secondary physician or a physician designated by the primary physician to write a report, were on the panel. The paragraph allowing discretionary replacement of a panel for good cause is rephrased for clarity. The paragraph allowing the IMC Medical Director to replace a panel physician because the specialty chosen is inappropriate, is deleted.

Section 33.5

This new section provides for inactive status of QME's. QME's may retain their certificates for a minimal fee, if they no longer perform QME evaluations, if they go on inactive status. QME's can return to active status by notifying the Executive Medical Director. Before returning to active status, the physician must either have completed required hours of continuing education or have retaken the QME

examination. It would be cause for discipline for a QME on inactive status to perform a medical examination requiring a QME certificate. Physicians called to active duty in the armed forces, would be able to resume the remainder of their QME term which was interrupted by military service.

Section 34.

This section currently provides that a QME examination may be conducted only at the QME office listed on the panel form. The amendment would permit the examination to be conducted at other locations upon the agreement of the employee and the claims administrator.

Section 35.

This section, which provides for exchange of information between the parties and the QME where the employee is not represented, is partially rewritten for clarity, and thus its paragraphs are re-lettered and renumbered. In addition to medical records, the amendment would allow the parties to provide a job analysis agreed to by the parties, and the record of any previous awards or settlements in any workers compensation proceeding. Another added sentence would make clear that the IMC may institute discipline against a QME for violating this section. An additional paragraph would define employer contact with the QME which is only about the provision of treating physician's records, not to be ex parte contact.

Section 35.5

This section which requires certain examinations to be performed according to IMC evaluation procedures is re-written for clarity. Use of the clause, *to determine the existence and extent of permanent impairment and limitations resulting from an injury*, is substituted for a reference to Labor Code sections 4060, 4061, and 4062.

Section 38

This section provides for time frames in which QME examinations must be completed, and the granting of extensions of those times. The section is partially re-written for clarity. What used to be in paragraph (a) is now in paragraph (d). A new paragraph (a) is added to make clear that it applies to initial comprehensive evaluations and supplemental evaluations. QME's now have 60 days from the date of request, to complete a supplemental report, unless the parties have agreed to an extension. No consequence is now stated for not completing the supplemental report within 60 days. A provision is added that would entitle the employee to request a new panel of QME's if a QME fails to complete a requested supplemental report within 60 days.

Section 39

This section provides for when records may be destroyed. This section has minor wording changes made in it for clarity. There is no substantive change to the meaning of the section.

Section 39.5

This section provides for the retention of medical-legal reports for five years. It is reworded for clarity without substantive change. Additionally, a new sentence is added to allow for electronic form retention of reports if the documents contain a digital signature as defined in the Government Code.

Section 41

This section establishes some ethical requirements for QME's. QME's are now barred from ex parte communication in violation of Labor Code Section 4062.2. The amendment would also bar ex parte communication which is in violation of Section 35 of these regulations. The amendment would also prescribe that all discussions in the QME's medical report of medical issues, research, and conclusions shall be composed by the QME. It would also specifically bar previously used language created by a third party and language not written by the QME. It would also provide that a QME may not treat or solicit to provide medical treatment to an employee except as permitted in Section 11(d)(which permits emergency treatment or treatment after the employee has requested it be provided by the QME). The amendment would also provide that no QME shall engage in inappropriate physical contact or make inappropriate or offensive comments not related to the examination.

Section 49

This section provides additional definitions for Article 4.5 of the Regulations, relating to minimum time guidelines. The definition of QME has been moved to Section 1, the principal definitional section. For clarity, the words *by the evaluator* are added to a description of time spent on research, record review, and report writing. This makes no substantive change.

Section 49.2

This section prescribes minimum time guidelines for a neuromusculoskeletal evaluation. The phrase, *including an injury to the foot and ankle* is added, to make it clear that these injuries fall within this guideline.

Section 49.4

This section prescribes minimum time guidelines for a cardiovascular evaluation. There is a rephrasing which has no substantive effect.

Section 49.6

This section prescribes minimum time guidelines for a pulmonary evaluation. There is a rephrasing which has no substantive effect.

Section 49.8

This section prescribes minimum time guidelines for a psychiatric evaluation. There is a rephrasing which has no substantive effect.

Section 49.9

This section prescribes minimum time guidelines for evaluations not otherwise specified. There is a rephrasing which has no substantive effect.

Section 50

This section prescribes the process for applying for reappointment as a QME and for the application form. There are several minor word insertions for clarity. The amendment adds to the application form requirements that the applicant state whether the applicant has been convicted of any criminal charge, and if so what; that the applicant state whether the applicant is currently the subject of an accusation by the applicant's licensing board; that the applicant state how many QME reports the QME has prepared; that the applicant sign the application under penalty of perjury.

Section 52

This section provides that QME's may be denied reappointment if they have failed to notify the IMC of periods of unavailability to perform QME evaluations. The amendment would change the period covered by the obligation to report unavailability from a calendar year to the fee period of the QME, as defined.

Section 58

This new section would provide that the IMC may deny reappointment to a QME who would no longer meet the requirements for initial appointment.

Section 60

This section defines the grounds for discipline of QME's. There are several word changes for clarity which have no substantive effect. The amendment would also provide that the IMC may institute or continue a disciplinary proceeding against a QME even if the QME resigns, the appointment expires, or the QME certification is forfeited by operation of law. The section lists some offenses which may occasion imposition of discipline, one of which is ex parte contact prohibited by Labor Code Section 4062.2. The amendment would also provide that ex parte contact prohibited by Section 35 of these regulations is also such an offense.

Section 61

This section delineates the hearing procedure to be followed for QME discipline. There are several changes in phrasing without substantive effect. The section provides that an administrative law judge or hearing officer shall file a written statement of findings and decisions after a decision has been made regarding the existence of a prima facie case, and after a hearing. The amendment would delete the reference to a decision about the existence of a prima facie case as duplicative of an earlier requirement that a committee find the existence of a prima facie case.

Section 62

This section provides for a procedure for probation of disciplined QME's. There are several rephrasings which have no substantive effect.

Section 63

This new section provides for the process of using and serving a notice of denial and statement of issues in connection with the denial of appointment, reappointment, and certification as an education provider. The section would provide that the council would notify applicants whose applications were to be denied. The IMC could either serve a statement of issues of matters to be contested per Title 2, Division 3, Part 1, Chapter 5 (beginning with section 11500) of the Government Code to begin a contested proceeding, or notify the applicant that the application is denied and of the applicant's right to a hearing. It would further provide that unless the applicant made a written request for hearing within 60 days, the applicant's right to a hearing would be deemed waived.

Section 156

This section provides for the IMC to request to view and to review QME advertising copy. There are several word changes for clarity which have no substantive effect.

Section 157

This section provides for determinations of the IMC and appeals regarding QME advertising copy which the IMC has requested to review. The section now provides for the Medical Director to make a preliminary determination that it violates Business and Professions Code Section 651. The IMC is to hold a hearing on the Medical Director's preliminary determination. If the IMC sustains the Director's determination and the physician is not a QME, the IMC is to refer the matter to the licensing board. If the IMC sustains the Director's determination and the physician is a QME, the IMC is to hold a hearing or delegate the hearing to an administrative law judge. If the complaint is sustained, the QME has 30 days to file a notice of appeal, in which case, three members of the IMC shall serve as an appellate panel. The appellate

panel is to hear the appeal and recommend a decision to the IMC. The IMC is to take appropriate action on the recommended decision. A complete copy of the record is to be furnished each IMC member before the IMC takes final action. The director is to forward the final decision of the IMC to the licensing board.

The amendment would rewrite the section. If the Director made a preliminary determination of violation, the matter would be referred to the Discipline Committee. If the Committee sustained the Directors determination, the QME would be notified of a right to a hearing. A hearing may be held by either a hearing officer designated by the Director or by an administrative law judge. If a decision sustained the determination, it should be recommended to the IMC, along with recommended sanctions. The council may adopt the decision, or decide to take the case unto itself as a body. The QME may petition for reconsideration of an adverse decision within 30 days. Judicial review may be had by filing a petition within 30 days of an adverse decision.

Section 158

There is one occasion in which the word *their* is substituted for the phrase *his or her*.

Comparable Statutes and Regulations:

There are no comparable federal statutes or regulations.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

The IMC has made the following initial determinations with respect to these proposals. These proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts distinct from those imposed by statute. The IMC has determined that the proposed regulations will not impose any new mandated program on local agencies or school districts.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state: None

The proposals do not impose any reimbursable costs on local agencies or school districts.

The proposals do not involve any nondiscretionary costs or savings for local agencies.

The proposals do not involve any costs or savings for state agencies.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

The IMC has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Qualified Medical Evaluator statutes and regulations are neutral in their treatment of California businesses as compared to businesses from other states. Qualified Medical Evaluators are not businesses, but individuals subject to regulation, and none of the proposed changes will affect Qualified Medical Evaluators substantially differently than existing regulations.

Known Cost Impacts on Representative Private Person or Business:

These proposals are directed primarily at Qualified Medical Evaluators. The IMC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with these proposed regulations.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3(b)):

The IMC has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

Reporting Requirements (Finding under Government Code section 11346.3(c)):

These proposals impose no reporting requirements on businesses.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The IMC has made an initial determination that these proposals will not affect small business. The reason for this determination is that the proposals consist of a series of amendments designed to improve and make more clear regulations of the Qualified Medical Evaluator program, and the proposals will have no effect on small business distinct from the statutes and existing regulations. The proposals and the regulations they would amend are directed at Qualified Medical Evaluators. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses

legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the IMC must determine that no reasonable alternative considered by the IMC or that otherwise has been identified and brought to the IMC's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of a series of amendments to existing regulations governing Qualified Medical Evaluator Program, and the adoption of several new regulations. The amendment of these existing regulations and the adoption of the new regulations appears to be the most feasible solution to eliminate the problems seen in the Qualified Medical Evaluator program.

The IMC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations, because the issues addressed are not so complex that they cannot easily be reviewed during the comment period.

However, text of the draft proposed regulations has been the subject of discussion at noticed meetings of the Education Committee and the Quality Assurance Committee of the IMC, where public comment was invited, before the IMC proposed the adoption of the regulations.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The IMC will have the rulemaking file available for inspection and copying throughout the rulemaking process. As of the date of this Notice the file consists of this notice, the initial statement of reasons, and the text of the proposed regulations. The entire rulemaking file may be inspected during the hours of 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding public holidays, at:

Industrial Medical Council
395 Oyster Point Blvd, Suite 102
South San Francisco, California

Copies may be ordered by contacting the agency contact person listed above.

WEBSITE

Rulemaking records, including the text of the proposed regulations, may be accessed through the Department of Industrial Relations' Internet website at www.dir.ca.gov. To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the IMC may adopt the proposed regulations substantially as described in this notice. If the IMC makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the IMC adopts the regulations as revised. Any such modifications will also be posted on the Department's website at www.dir.ca.gov. To access it click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link. Please send requests for copies of any modified regulations to the attention of the contact person listed above. The IMC will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS AND THE RULEMAKING FILE

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from the contact person named in this notice, or may be accessed on the Department of Industrial Relations' website at www.dir.ca.gov. To access it click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link, and the link to Final Statement of Reasons within it.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the IMC's mailing list.

If adopted, the proposed regulations as amended will appear in Title 8, California Code of Regulations, Chapter 1.

TITLE 8. INDUSTRIAL MEDICAL COUNCIL

NOTICE OF PROPOSED RULEMAKING

The Industrial Medical Council ("IMC") proposes to amend regulations governing the Qualified Medical Evaluator program. The existing regulations are found

in Chapter 1, commencing with Section 1, of Title 8 of the California Code of Regulations. The proposed amendments will make the Qualified Medical Evaluator program operate more effectively. The IMC proposes to adopt these amendments and these new regulations after considering all comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD, AGENCY CONTACTS

WRITTEN COMMENT PERIOD

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the IMC at the addresses listed below. The written comment period closes on November 17, 2003, at 5:00 p.m., and the IMC will consider only those comments which are received by that deadline. Written comments may be submitted by letter, facsimile, or e-mail by as follows (Comments by email are preferred, and will save the agency personnel time and taxpayer dollars in responding to them):

Industrial Medical Council, Regulations
P.O.B. 8888
San Francisco, CA 94128
Facsimile: (650) 737-2637
E-mail: imcrules@hq.dir.ca.gov

Written comments may also be submitted in person at the offices of the IMC at the following street address:

Industrial Medical Council
395 Oyster Point Blvd, Suite 102
South San Francisco, California

All written comments will be given consideration by the IMC, regardless of which mode of delivery is chosen.

AGENCY CONTACTS

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, for the Initial Statement of Reasons, and for any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Annadessa Gregorio
Industrial Medical Council
P.O.B. 8888
San Francisco, CA 94128-8888
(650) 737-2700

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulations, or in the event the contact person is unavailable, inquiries should be directed to:

Richard Starkeson
Industrial Medical Council
P.O.B. 8888
San Francisco, CA 94128-8888
(650) 737-2700

The IMC will hold a public hearing on the regulations if, no later than 15 days before the end of the written comment period, it receives a written request for a public hearing from any interested person or his or her authorized representative.

AUTHORITY AND REFERENCE

AUTHORITY: Labor Code sections 59, 139, 139.2

REFERENCE: Labor Code Sections 139, 139.2

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

OVERVIEW

The IMC is charged under Labor Code section 139 et seq., with administering the Qualified Medical Evaluator program in workers compensation. Qualified Medical Evaluators (QME's) examine employees for workers compensation injury claims, and make evaluations of disability upon which Workers Compensation Appeals Board decisions may be based. In most cases, for unrepresented employees, the reports of a QME and of treating physicians are the only medical evaluations used in determining disability.

The Qualified Medical Evaluator regulations had not been amended since 1999. It had since come to the attention of the IMC that there are problems with some regulations, some appear to be ambiguous, and some new regulations are necessary to effectively carry out the Qualified Medical Evaluator program mandated by Labor Code section 139. A group of proposed regulations is now pending adoption. Under this Notice, the Industrial Medical Council is proposing two additional regulatory changes.

INFORMATIVE DIGEST

The IMC proposes to amend a regulation Section 18 found in Chapter 1, section 18, Title 8 of the California Code of Regulations and adopt a new regulations, section 66.

The IMC did not consider any alternatives to any of the proposed changes to the existing regulations. Amendments are necessary to the regulations to remove some ambiguities and eliminate problems in Qualified Medical Evaluator program administration.

The IMC proposes to amend section 18 and to adopt section 66.

Section 18.

This section provides for the time at which fees are to be paid by QME's. In the regulations currently proposed under another Notice, the section was rewritten for clarity, deleting unnecessary language. A

requirement that QME's whose status had lapsed for more than two years would have to meet current requirements for eligibility and retake the report writing class was added in paragraph (c).

This Notice covers only an additional proposed change, which is the addition of new paragraph (d). The problem addressed is how to treat Qualified Medical Evaluators (QME's) who have let their QME status lapse by either not paying their annual fee or by not applying for reappointment by their anniversary date.

Labor Code 139.2 (d) spells out the criteria for being reappointed as a QME. In relevant part, section (3) states that the QME must have completed 12 hours of Continuing Education (CE) within the previous 24 months. Title 8, Chapter 1, Section 55 discusses the issue of CE', how many hours are required and within what time frame. There it is stated that the 12 units must be within 24 months of the QME's term of appointment. This means that the QME requesting reappointment must have completed the 12 hours of CE by the time his or her appointment period has ended.

The new subdivision (d) provides that for a QME who has had a lapse in the appointment period, but who comes back within two years per paragraph (b), when submitting the reappointment application the QME must: (a) either have 12 hours of appropriate CE within 24 months of the previous appointment period or show 12 hours of recent CE; (b) have an additional 12 hours of CE by the end of the current appointment period; and (c) pay the fee within two years of the previous appointment period. The proposed paragraph (d) establishes this. Appointment periods would never be reset under this policy.

Section 66.

This new section provides for a definition of "a crime of moral turpitude" for purposes of Labor Code section 139.2. Labor Code section 139.2 (m) provides that the IMC shall terminate the QME status any physician whose license to practice has been terminated, who has been convicted of a misdemeanor or felony related to the conduct of medical practice, or who has been convicted "of a crime of moral turpitude." As termination is the most severe sanction the IMC can impose, it should always be based on clearly defined transgressions. The words "moral turpitude have" have different meanings dependent upon the context. In the legal sense, a crime may be seen to be a crime of moral turpitude for some legal purposes but not others. The IMC found that it was important to define precisely what was a "crime of moral turpitude" for purposes of termination under Labor Code section 139.2. Traditionally, crimes of moral turpitude have been crimes of dishonesty and

crimes which involve readiness to do evil, and not crimes of battery. The new Section 66 adopts a definition of "crime of moral turpitude" for purposes of termination pursuant to Labor Code section 139.2, subdivision (m).

Comparable Statutes and Regulations:

There are no comparable federal statutes or regulations.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

The IMC has made the following initial determinations with respect to these proposals. These proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts distinct from those imposed by statute. The IMC has determined that the proposed regulations will not impose any new mandated program on local agencies or school districts.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

The proposals do not impose any reimbursable costs on local agencies or school districts.

The proposals do not involve any non-discretionary costs or savings for local agencies.

The proposals do not involve any costs or savings for state agencies.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

The IMC has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Qualified Medical Evaluator statutes and regulations are neutral in their treatment of California businesses as compared to businesses from other states. Qualified Medical Evaluators are not businesses, but individuals subject to regulation, and none of the proposed changes will affect Qualified Medical Evaluators substantially differently than existing regulations.

Known Cost Impacts on Representative Private Person or Business:

These proposals are directed primarily at Qualified Medical Evaluators. The IMC is not aware of any cost

impacts that a representative private person or business would necessarily incur in reasonable compliance with these proposed regulations.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3(b)):

The IMC has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

Reporting Requirements (Finding under Government Code section 11346.3(c)):

These proposals impose no reporting requirements on businesses.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The IMC has made an initial determination that these proposals will not affect small business. The reason for this determination is that the proposals consist of a series of amendments designed to improve and make more clear regulations of the Qualified Medical Evaluator program, and the proposals will have no effect on small business distinct from the statutes and existing regulations. The proposals and the regulations they would amend are directed at Qualified Medical Evaluators. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the IMC must determine that no reasonable alternative considered by the IMC or that otherwise has been identified and brought to the IMC's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of an amendment to an existing regulation governing Qualified Medical Evaluator Program, and the adoption of a new regulation. The amendment of the existing regulation and the adoption of the new regulation appears to be the most feasible solution to eliminate the problems seen in the Qualified Medical Evaluator program.

The IMC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations, because the issues addressed are not so complex that they cannot easily be reviewed during the comment period.

However, text of the draft proposed regulations has been the subject of discussion at noticed meetings of the Education Committee and the Quality Assurance Committee of the IMC, where public comment was invited, before the IMC proposed the adoption of the regulations.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The IMC will have the rulemaking file available for inspection and copying throughout the rulemaking process. As of the date of this Notice the file consists of this notice, the initial statement of reasons, and the text of the proposed regulations. The entire rulemaking file may be inspected during the hours of 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding public holidays, at:

Industrial Medical Council
395 Oyster Point Blvd, Suite 102
South San Francisco, California

Copies may be ordered by contacting the agency contact person listed above.

WEBSITE

Rulemaking records, including the text of the proposed regulations may be accessed through the Department of Industrial Relations' Internet website at www.dir.ca.gov. To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the IMC may adopt the proposed regulations substantially as described in this notice. If the IMC makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the IMC adopts the regulations as revised. Any such modifications will also be posted on the Department's website at www.dir.ca.gov. To access it click on the "Proposed Regulations—Rulemaking" link and scroll down the

list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link. Please send requests for copies of any modified regulations to the attention of the contact person listed above. The IMC will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS AND THE RULEMAKING FILE

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from the contact person named in this notice, or may be accessed on the Department of Industrial Relations' website at www.dir.ca.gov. To access it click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link, and the link to Final Statement of Reasons within it.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the IMC's mailing list.

If adopted, the proposed regulations as amended will appear in Title 8, California Code of Regulations, Chapter 1.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **November 20, 2003** at 10:00 a.m. in the Auditorium of the California State Building, 1350 Front Street, San Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **November 20, 2003** following the Public Meeting in the Auditorium of the California State Building, 1350 Front Street, San Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health regulations in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **November 20, 2003** following the Public Hearing in the Auditorium of the California State Building, 1350 Front Street, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on November 20, 2003.

1. TITLE 8: CONSTRUCTION SAFETY ORDERS
Chapter 4, Subchapter 4, Article 10
Section 1593
Securing Loads on Haulage Vehicles
2. TITLE 8: CONSTRUCTION SAFETY ORDERS
Chapter 4, Subchapter 4, Article 29
Section 1716.2
Proposed Vertical Standard—Fall Protection for Residential-Type Framing Activities

A description of the proposed changes are as follows:

1. TITLE 8: CONSTRUCTION SAFETY ORDERS
Chapter 4, Subchapter 4, Article 10
Section 1593
Securing Loads on Haulage Vehicles

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking as a result of Board staff evaluation and consideration of the issue of securing loads under Section 1593(f) of the Construction Safety Orders and as described in Occupational Safety and Health Appeals Board (OSHAB) Decision After Reconsideration (DAR), Docket No. 98-R5D2-3674, in the matter of Obayashi Corporation. As indicated in the Appeals Board Decision, there was confusion and uncertainty on the part of the employer with regard to the meaning of subsection (f), entitled “Unstable Loads.” The employer argued that the regulation only requires unstable loads to be secured and not all loads, as is the intent of the regulation. The Appeals Board found the employer’s position to be untenable because such an interpretation would lead to “unwieldy subjective enforcement”, since a load that was stable one moment might be unstable the next and vice versa. Board staff believes the term “unstable” in the title of subsection (f), “Unstable Loads”, leads some to surmise that a load must be unstable before a load must be stabilized and secured. Consequently, Board staff proposes to replace the term “unstable” with “securing” in order to eliminate any possible confusion over the meaning of the regulation.

Section 1593. Haulage Vehicle Operation.

Section 1593 addresses various issues relating to haulage vehicle operations which include, but are not limited to: vehicle speeds, use of mechanical threading devices, vehicle maintenance and tire repair.

Existing Subsection (f), entitled “Unstable Loads,” requires loads on vehicles to be secured against displacement. A revision is proposed to replace the term “unstable” in the subsection title with the term “securing.” The proposed revision will have the effect of clarifying to the employer that all loads are to be secured against displacement.

COST ESTIMATES OF PROPOSED ACTION Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only.

Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A description of the proposed changes are as follows:

2. TITLE 8: CONSTRUCTION SAFETY ORDERS

Chapter 4, Subchapter 4, Article 29
Section 1716.2

Proposed Vertical Standard—Fall Protection for Residential-Type Framing Activities

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is the result of a petition to the Board from the California Building Industry Association (CBIA) to develop and adopt an industry-specific fall protection standard for residential-type framing activities. The petition (OSHSB File No. 440, adopted May 16, 2002) was initiated in response to enforcement actions resulting from Construction Safety and Health Inspection Project (CSHIP) "sweeps" of residential framing worksites throughout the state coupled with what the Petitioner feels is a more restrictive interpretation by the Division of Occupational Safety and Health (Division) when a fall protection plan may be implemented. The CSHIP sweeps have resulted in a significant increase in fall protection citations in the residential construction industry.

The last comprehensive update of fall protection standards for residential construction was conducted in 1997. The changes made at that time were initiated by revisions to Federal 29 CFR Part 1926, Subpart M, Fall Protection, on August 9, 1994. The revised Subpart M established the employer's duty to provide fall protection at a trigger height of 6 feet and above. California Labor Code, Section 142.3(a)(2), requires the State to adopt standards at least as effective as federal standards.

Most of Subpart M was proposed to be adopted verbatim into California Code of Regulations, Title 8. Due to comments received on the proposal at a December 1994 public hearing, a majority of which were submitted by roofers, the Board convened an advisory committee to compare existing State fall protection standards with Subpart M and determine where changes to the State standards were necessary. The committee's consensus was that Federal OSHA's six-foot trigger height was unreasonable, economically onerous and unacceptable, both to labor and management. Subsequent meetings between all interested parties, including Federal OSHA, culminated in the comprehensive 1997 rulemaking.

Revisions made at that time concerned fall protection systems and procedures and were intended to prevent employees from falling off, onto, or through working levels. They included revisions to CSO Article 24, Fall Protection, Sections 1669, 1670, 1671, 1671.1 and 1671.2. These sections prescribe fall protection systems and procedures for the construction industry, including residential frame construction.

One of the problems expressed by the residential framing industry is that the present fall protection standards have different requirements based on the nature of the work and the height above which the work is being performed. For example, the trigger height for roofers is 20 feet. For employees working on 4 inch or wider structural members the trigger height is 15 feet, and for anyone working on unprotected platforms, scaffolds, or the edge of structures, it is 7-1/2 feet.

Due to the nature of residential construction, under the current regulations, employees can frequently be subject to different fall protection requirements within a single day, even on single story construction, and the various work activity-based trigger heights create confusion which often results in non-compliance.

The Board directed staff to convene an advisory committee to consider the following:

- Developing industry specific fall protection requirements for residential framing.
- Reviewing residential framing fall protection trigger heights for possible modification.

- Considering clarifying when conventional fall protection is "impractical or creates a greater hazard," and thus when a fall protection plan may be used for residential framing.

The Petitioner requested to limit the scope of the petition to residential framing since this is where almost all of the questions and concerns of their members have been focused.

Section 1716.2. Wood-Frame Construction, Residential/Commercial.

This proposal would amend the title to read "Wood and Light Gage Steel Frame Construction, Residential/Light Commercial" (*new text underscored*). Light gage steel has been added to the title to accommodate current industry practice to use light gage steel as well as traditional dimensional wood products for residential framing. Residential-type framing is used in some "light commercial" structures as well, and the proposal is written to apply to this type of framing whether it is found in a residential or a light commercial structure. The effect of this amendment will be to use performance-based regulations to address a type of framing which is increasingly being used in the framing of residential-type structures and about which the regulations are currently silent, and to ensure that employees engaged in residential framing operations are protected from falls by specific regulations which can be readily located by the employer.

Subsection (a)

Existing subsection (a) requires that before manually raising wood framed walls that are 10 feet or more in height, temporary restraints such as cleats on the foundation/floor system or straps on the wall bottom plate shall be installed to prevent inadvertent horizontal sliding or uplift of the wood framed wall bottom plate when it is being tilted up.

This proposal would revise and relocate subsection (a) to subsection (c)(1) in order to accommodate two new subsections: (a) entitled "Scope and Application" and (b) "Definitions." The proposed changes will create a vertical standard for fall protection that will apply to work associated with the framing of new buildings or structures using the operations, methods, and procedures associated with residential-type framing activities, i.e., joists or trusses resting on stud walls. The effect of this proposed change is to clarify the applicable types of framing for this vertical standard. Although residential-type framing is understood by most to consist of joists or trusses resting on stud walls, the term "light-commercial," although widely used, is more ambiguous, and the effect of the proposed subsection will be to clarify applicable types of structures for this standard.

Subsection (b)

Existing subsection (b) requires that anchor bolts shall not be used for blocking or bracing when raising wood framed walls. This proposal would revise and relocate subsection (b) to subsection (c)(2) in order to accommodate a new subsection (b) entitled "Definitions" which will contain definitions of framing terms. These definitions were developed from two main sources: (1) glossaries of residential framing terms available on the Internet, and (2) input from ad hoc advisory committee participants. The committee recognized there are regional differences in meaning and usage of framing terms throughout the United States. Therefore, all of these terms have been reviewed by the committee and determined by consensus to be as generally used and understood in the framing industry in California. Furthermore, each definition has been determined by consensus of the ad hoc advisory committee to be necessary for proper application of the proposed vertical standard. The effect of these proposed changes will be to clarify terms for the proper understanding and application by employers of fall protection requirements to residential-type framing activities.

Subsection (c)

New subsection (c) entitled "Raising Walls" will contain relocated subsections (a) and (b) as new subsections (c)(1) and (c)(2) respectively. The effect of this amendment will be to facilitate compliance by consolidating existing standards for raising framed walls into one subsection within the new vertical standard for residential framing, thus assuring that employees will be protected from hazards when raising framed walls.

Subsection (c)(1)

Existing subsection (a) is proposed to be modified and relocated to new subsection (c)(1). "Wood framed" is proposed to be changed to "framed" to provide performance-oriented language which will include light gage steel framing as well as other materials that may be used for residential-type framing in the future. The trigger height is proposed to be increased from 10 feet to 15 feet for consistency with the trigger height used throughout the rest of the proposed vertical standard. Input from advisory committee members indicated that framed walls up to and including 15 feet are already commonly being manually raised safely using the prescribed precautions. The effect of the proposed amendments will be to promote compliance by establishing a uniform trigger height for residential framing and to prescribe proper bracing when raising framed walls, thus ensuring that employees are protected from hazards when raising framed walls.

Subsection (c)(2)

Existing subsection (b) is proposed to be relocated to new subsection (c)(2). Performance-based modifications are proposed to accommodate light gage steel and other residential-type framing materials, and to establish a consistent 15-foot trigger height for raising framed walls. The modifications will also clarify that, while anchor bolts can be used for blocking or bracing, they cannot be used alone; i.e., they must be used in conjunction with other forms of restraint to prevent horizontal sliding or uplift when raising framed walls. The effect of the proposed modifications will be to establish a uniform trigger height for residential framing and to prescribe proper blocking and bracing when raising framed walls, to ensure that employees are protected from hazards when raising framed walls.

Subsection (d)

A new subsection (d) entitled "Stabilization of Structures" will require top plates, joists, rafters, trusses, beams or other structural members be braced, supported or secured before employees are permitted to work from or walk on them. Although these requirements are contained generally in Section 1709, General Requirements, the advisory committee consensus was that they should be prescribed within the vertical standard for residential framing. The effect of this proposed amendment will be to establish structural stabilization prior to the implementation of other practices permitted by this vertical standard for residential framing thus ensuring that employees are protected from falling when working from or walking on top plates, beams or other structural members, joists, rafters, trusses, etc.

Subsection (e)

A new subsection (e) entitled "Work on Top Plate and Roof Structure Framing" will prescribe safe work practices for work on the top plate and roof structure framing. Application of roofing materials is not a framing activity; and thus, the proposed standard will not overlap or duplicate vertical standards for roofing operations found in existing Article 30, Roofing Operations and Equipment. The effect of this new subsection will be to clarify to the regulated public the location of regulations prescribing safe practices for residential framing work on top plates and on roof structures, thus ensuring that employees will be protected from falls from the top plate and roof structure during framing.

Subsection (e)(1)

New subsection (e)(1) requires the provision of fall protection when employees are walking or working on top plates, joists, rafters, trusses, beams or other similar structural members over 15 feet above the surrounding grade or floor level below. An exception

will provide that employees shall be considered protected from falls between rafters or roof trusses when they are walking/working on securely braced rafters or roof trusses on center spacing not exceeding 24 inches when more than 6 feet from an unprotected side or edge. The effect of this subsection will be to clarify fall protection requirements contained in Article 24 as they apply to the unique circumstances of residential framing. The exception will permit employees to install decking and/or sheathing by permitting them to walk and work on securely braced top plate and roof structure framing.

Subsection (e)(2)

A new subsection (e)(2) will prescribe minimum standards for truss support plates which are often used when installing roof trusses over large open spans such as multi-car garages. The effect of this subsection will be to promote safe working conditions for employees by prescribing minimum requirements for a stable walking/working surface during the truss installation process when employees may find it necessary to work on or from trusses or a truss support plate during the course of framing.

Subsection (f)

A new subsection (f) entitled “Work on Floor Joists” will prescribe safe work practices for work on floor joists using a 15-foot trigger height. The effect of this new subsection will be to maintain uniformity in trigger height for implementation of fall protection measures and to assist the employer in locating regulations pertaining to safe practices for residential framing work on floor joists, which are intended to protect employees from falls when working on joists over 15 feet above the surrounding grade or floor level below.

New subsections (f)(1)–(3) will cover the sequence of work in placing, rolling and installing floor joists. Subsection (f)(1) prescribes that employees shall be considered protected from falls when installing floor joists up to and including 15 feet above the surrounding grade or floor level below when standing on or working from joists laid on their sides on center spacing not exceeding 24 inches on the top plate within 24 inches of the top plate or other structural support. The effect of subsection (f)(1) will be to clarify this practice as a legal walking/working surface below the 15-foot trigger height. Subsections (f)(2) and (f)(3) prescribe fall protection requirements for work on installed floor joists and floor joists within 6 feet of the building perimeter or other unprotected sides or edges over 15 feet above the surrounding grade or floor level below. The effect of subsections (f)(2) and (f)(3) is to require the employer to provide fall protection for work on floor joists consistent with the requirements for similar work on the top plate and

roof structure framing found in subsection (e)(1) to prevent employees from falling from or through floor joists to the level below.

Subsection (g)

A new subsection (g) entitled “Work on Floors and Other Walking/Working Surfaces” is proposed that will prescribe safe work practices for work on floors after the deck has been installed and while walls are being framed and placed, using a consistent 15-foot trigger height for fall protection. The effect of this new subsection will be to maintain consistency in trigger height for implementation of fall protection measures and to assist the employer in locating regulations for residential framing work on decked floors and other walking/working surfaces.

Subsection (h)

A new subsection (h) entitled “Work on Starter Board, Roof Sheathing and Fascia Board” will prescribe fall protection requirements for sheathing and trimming roof framing in preparation for roofing operations. This subsection will not address installation of roofing materials which is already regulated by Article 30, Roofing Operations and Equipment. Subsection (h)(1) clarifies that fall protection requirements will only apply to structures greater than one story in height where the fall height exceeds 15 feet and/or where the roof slope exceeds 7 in 12 consistent with Section 1670. An exception will permit the use of slide guards for fall protection on roofs with slopes up to 12 in 12 with fall heights of 15 feet or less. This subsection establishes a provision for work on limited portions of single story roof structures that may exceed 15 feet. The exception is based on provisions similar to Federal Subpart M, except that committee consensus was to limit the use of slide guards to a maximum slope of 45 degrees (12:12). Subsections (h)(2) and (h)(3) prescribe options for safe work procedures at the gable end of the structure, including an exception for work outside the gable end truss which is of short duration and limited exposure. The effect of this subsection will be to identify available safe work practice options when applying starter board, roof sheathing and fascia board to roof framing.

Subsection (i)

A new subsection (i) entitled “Installation of Windows” will clarify for residential construction the guarding of wall openings as required by Section 1632 while permitting removal of the guarding where necessary immediately prior to installation of window components in those openings. The effect of this subsection will be to clarify guarding requirements for window openings in residential construction, thus ensuring that employees are protected from falls through wall openings for windows.

Subsection (j)

A new subsection (j) entitled “Scaffolding” prescribes construction and installation standards for scaffolding used in residential construction. Subsection (j)(1) is included to assist the employer in locating existing Title 8 requirements for scaffolding pertinent to residential framing. Subsection (j)(2) is proposed to permit the omission of guardrails on the interior side of the scaffold under specific conditions similar to those for masons and bricklayers found in Section 1644(a)(6)(B). Subsection (j)(3) will permit scaffolding to be used as a form of edge protection subject to specified limitations. The concept of the edge protection platform is modeled after that of a catch platform which is permitted as a means of fall protection for roofing operations in Section 1724(c). The effect of subsection (j) is to clarify acceptable construction, installation and use of scaffolding for residential-type framing activities and to ensure that scaffolding is used during residential framing activities in a manner that will prevent an employee from falling to a level below.

Subsection (k)

A new subsection (k) entitled “Training” is proposed that will supplement the Illness and Injury Prevention Programs prescribed in CSO Section 1509 and GISO Section 3203 by providing industry-specific guidance for residential-type framing activities. The effect of this subsection will be to ensure that employees engaged in residential framing operations receive specific fall protection training in order to minimize the hazards associated with the erection and construction activities that the framing employee(s) will be exposed to.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination is based on advisory committee input that compliance with the proposed industry-specific standards will not be greater, and may actually be less costly than compliance with existing requirements generally applicable to the construction industry.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than November 14, 2003. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on November 20, 2003 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday

through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

AMENDMENT TO "PRINCIPALLY AT FAULT" REGULATION

RH 03030475
September 17, 2003

SUBJECT OF HEARING

The Insurance Commissioner proposes to amend Title 10, Chapter 5, Subchapter 4.7, Article 4, Section 2632.13 of the California Code of Regulations after considering comments from the public. The amendment will eliminate the existing requirement for automobile insurers to ascribe a specific percentage of fault to various drivers when determining who was principally at fault for an accident. The amendments also modify the insured's right to seek reconsideration of the insurer's determination of fault to conform to the reduced insurer requirement.

AUTHORITY AND REFERENCE

The Commissioner proposes these amendments to the regulations under the authority of California Insurance Code Sections 1861.025 and 12921, *CalFarm v. Deukmejian* (1989) 48 Cal.3d 805, 825 [258 Cal.Rptr. 161] and *20th Century v. Garamendi* (1994) 8 Cal. 4th 216, 280 [32 Cal.Rptr.2d 807], which recognize the Commissioner's implied authority to exercise those powers that may fairly be implied by statute.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to these proposed amendments, as follows:

Date and time: Thursday, November 20, 2003
10:00 AM

Location: Department of Insurance
Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL
COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Primary Contact:
Daniel Goodell, Sr. Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4191

Alternate Contact:
Bryant Henley, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4111

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person.

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on Thursday, November 20, 2003**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY
ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: goodelld@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person listed above. All comments sent by facsimile must be directed to the attention of Daniel Goodell using the following fax number: (415) 904-5490. **Comments sent to other**

e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Comments shall be submitted by only one of the above-described methods.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10, of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

Natasha Ray, Sr. Staff Counsel
California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW

Existing law (CIC § 1861.025) sets forth criteria that a person must meet to qualify to purchase a Good Driver Discount policy, as defined in CIC § 1861.02. One of the criteria is partially based on the number of automobile accidents for which the driver was "principally at fault." Existing law (CCR § 2632.13(e)) further requires the insurer to investigate an accident and determine whether the insured was principally at fault before counting the accident against the insured. Under CCR § 2632.13(c) a driver may only be considered "principally at fault" if the driver's actions or omissions were at least 51% of the proximate cause of the accident. Under CCR § 2632.13(e) an insurer must notify the insured of any determination that the insured was principally at fault, including the percentage of fault ascribed to the

insured. Under CCR § 2632.13(e) the insured has the right to request reconsideration of the insurer's determination of fault for an accident.

POLICY STATEMENT OVERVIEW

The controlling statute (CIC § 1861.025) only allows an insurer to charge an accident against an insured if the insured was "principally at fault." Under CCR § 2632.13 a driver is generally considered principally at fault for an accident whenever the driver's actions or omissions were at least 51% responsible. The exact percentage of fault is irrelevant—as long as it was at least 51%. Further, insurers' determinations of percentage of fault for accidents vary widely and the industry has been unable to make these determinations in a meaningful and consistent manner.

This amendment retains the beneficial requirement that insurers must investigate accidents before determining whether the driver was principally at fault. These amendments eliminate the requirement for insurers to determine the specific percentage by which drivers are at fault for accidents, and corresponding notice and reconsideration provisions.

EFFECT OF PROPOSED ACTION

When determining whether a driver was principally at fault for an accident pursuant to CCR § 2632.13, insurers will no longer be required to specify the exact percentage of fault.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS (Government Code § 11346.45)

The proposed amendments do not involve complex proposals or a large number of proposals and can easily be reviewed and considered by the public during the comment period. Accordingly it is not necessary to involve parties, subject to the proposed amendments, in public discussions regarding the amendments prior to publication of this notice.

The decision to promulgate these amendments was largely based on a request by the State Farm Group which pointed out, among other things, the risk that a party to a subsequent civil action may attempt to introduce an insurer's determination of percentage of fault as evidence against a policyholder.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

These proposed amendments do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for

which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Department has made an initial determination that the adoption of these amendments will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The basis for this determination is the fact that these amendments only eliminate a requirement that the existing regulations apply to certain licensees of the Department.

The Department has also made an initial determination that the adoption of these amendments will not have a significant effect on the creation of new businesses, the elimination of existing businesses or the expansion of existing businesses currently doing business within the State of California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the amendments to the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed amendments is to further the implementation of a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The matters proposed herein will only apply to insurance companies, and therefore will not affect small business. (Gov. Code § 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are also available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Select the link to either "Consumers" or "Insurers." Scroll down on the "Consumers" or "Insurers" page and click on the link titled "Proposed Regulations—Search." A search screen will appear.

To find documents concerning these proposed amendments, enter "RH03030475" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively you can search by any part of the name of these proposed amendments (AMENDMENT OF "PRINCIPALLY AT FAULT" REGULATION).

AVAILABILITY OF MODIFIED TEXT OF REGULATION

If the amendments to the regulations adopted by the Department differ from but are sufficiently related to the amendment as originally proposed, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these amendments prior to adoption from the contact person listed above.

TITLE 10. TECHNOLOGY, TRADE AND COMMERCE AGENCY

BOND AND LOAN GUARANTEE LINE TERMS CHAPTER 7, ARTICLE 3, SECTION 5002, 5009 AND 5010

NOTICE OF PROPOSED RULEMAKING

Notice is Hereby Given that the California Technology, Trade and Commerce Agency proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Agency proposes to amend sections 5002, 5009, and 5010 of Title 10 of the California Code of Regulations in order to implement, interpret and make specific Corporations Code sections 14070, 14071 and 14072, relating to Small Business Guarantee Terms.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency.

Written comments will be accepted by the Agency until 5:00 p.m. on November 17, 2003. Submit comments to:

Glenn Stober, Manager
Small Business Finance Programs
California Technology, Trade and
Commerce Agency
1102 Q Street, Suite 6000
Sacramento, CA 95814
Telephone: (916) 324-9538
Fax: (916) 322-5084

Comments may also be hand-delivered to 1102 Q Street, Suite 6000, Sacramento, CA 95814, or e-mailed to: gstober@commerce.ca.gov or faxed to (916) 322-5084.

PUBLIC HEARING

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

AUTHORITY AND REFERENCE

The proposed regulation has been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporations Code section 14072.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Corporations Code sections 14000 et seq. establishes a loan guarantee program designed to ensure that loans are available to small businesses that are unable to obtain conventional business loans or Small Business Administration loans. TTCA serves as the overall administrator and establishes charter agreements with Financial Development Corporations FDCs. The program, among other things, provides that the 11 current FDCs are authorized to utilize funds to guarantee loans made to small businesses.

Currently, the existing bond and loan guarantee program does not provide for enough bond guarantee/lines of credit needed for small and disadvantaged businesses wanting to participate on the largest bridge construction project in the history of California: the new construction of the San Francisco-Oakland Bay Bridge (SFOBB) New East Span Seismic Retrofit Project. Small and disadvantaged businesses have expressed to the Governor that the inability to qualify for bonding and lines of credit continue to be their primary obstacle to public works participation. Therefore, to allow small and disadvantaged businesses to compete on a level playing field when bidding for the SFOBB project, the California Department of Transportation (Department) and TTCA entered into an agreement to establish a new San Francisco-Oakland

Bay Bridge (SFOBB) state bond and line of credit guarantee program. The Department and Agency would in turn contract directly with a Bay Area FDC to work directly with small and disadvantaged contractors, the surety companies and the banks to issue the bond and line of credit supported by SFOBB program guarantees.

The Corporations Code gives the Agency authority to enter into an interagency agreement with the Department and use funds provided by the Department for guarantees. A survey of surety companies and Department's engineers and managers showed that changes must be made in the Agency's existing bond guarantee regulations before it can be used for the Bay Bridge project. One of the principal changes is increasing the maximum guarantee. Regulations must be adopted to differentiate between the SFOBB trust fund account and Nor-Cal's trust fund account for its regular loan guarantee program. After the two trust fund accounts are distinguished, the regulations will state the maximum guarantee each account can bear and the maximum guarantees that can be issued on behalf of any one client. The proposed changes will immediately benefit small and disadvantaged businesses wanting to bid on the Bay Bridge project.

The purpose of the proposed revision is to modify the terms and conditions of the bond and lines of credit guarantees issued by Corporations on behalf of small businesses. The proposed changes 1) increase the bond guarantee limit to \$500,000 from any single trust fund; 2) increase the number of days of the expiration date of the guarantee and conditions; 3) add a maximum guarantee amount from a combination of trust funds for any one business to \$1 million pursuant to certain provisions; and 4) increase the reporting time period for bond guarantee claim procedures.

DISCLOSURES REGARDING THE PROPOSED ACTION

The California Technology, Trade and Commerce Agency has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

- Cost impacts on a representative private person or businesses: The Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- The proposed regulation will not create or eliminate jobs within the State of California, will not create or eliminate businesses with the State of California, and will not affect the expansion of businesses currently doing business within the State of California.
- Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The California Technology, Trade and Commerce Agency has determined that the proposed regulation will impact small businesses in a positive manner.

CONSIDERATION OF ALTERNATIVES

The California Technology, Trade and Commerce Agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose of the proposed action, or be as effective and less burdensome to affected private persons than the proposed regulations.

The Agency invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at any hearing that may be requested or during the written comment period.

CONTACT PERSON (S)

Please direct inquiries and questions regarding the substance of the proposed regulations, requests for copies of the proposed text, the initial statement of reasons, the modified text of the regulations, if any, or any other rulemaking documents to:

Glenn Stober, Manager
Small Business Finance Programs
California Technology, Trade and
Commerce Agency
1102 Q Street, Suite 6000
Sacramento, CA 95814
Telephone: (916) 324-9538
Fax: (916) 322-5084
E-mail: gstober@commerce.ca.gov

The following person is designated as a backup contact person for inquiries regarding the proposed regulation:

Karen Kawada
Program Fund Analyst
Small Business Finance Programs
California Technology, Trade and
Commerce Agency
1102 Q Street, Suite 6000
Sacramento, CA 95814

Telephone: (916) 323-5825

Fax: (916) 322-5084

E-mail: kkawada@commerce.ca.gov

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five- (45) day public comment period, the Agency may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Agency regarding this proposal, the Agency may determine that changes to the proposed regulation are appropriate. If the Agency makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Agency adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Glenn Stober at the above address. The Agency will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED REGULATIONS

The Agency has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Agency's office at 1102 Q Street, Suite 6000, Sacramento, California 95814, during normal business working hours. Please contact Glenn Stober at the above address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Agency is required to prepare a Final Statement of Reasons. Once the Agency has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Agency Contact Person identified in this Notice.

AGENCY INTERNET WEBSITE

The Agency maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://commerce.ca.gov>

Americans with Disabilities Act (ADA): To comply with the nondiscrimination requirements of the ADA, it is the policy of the State to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing reasonable modification to participate in the public comment process, please contact Glenn Stober (address and contact information noted above).

To use the California Relay Service, (telephone device for the hearing impaired), call toll free:

California Relay Service:

Voice: 1-800-735-2922

TTY: 1-800-735-2929

If reasonable modifications are needed at the public hearing, if held, to ensure that the needs can be met, individuals are asked to submit their requests no later than 10 working days prior to the hearing.

TITLE 13. CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

**TITLE 13, CALIFORNIA CODE OF
REGULATIONS (13 CCR) DIVISION 2,
CHAPTER 6.5, ARTICLE 6—CARRIER
REQUIREMENTS ADD SECTION 1230.5**

INTERMODAL CHASSIS INSPECTION TAGS (CHP-R-03-05)

The California Highway Patrol (CHP) proposes to add regulations to Title 13, California Code of Regulations (13 CCR), relating to intermodal inspection tags.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

13 CCR, Division 2, Chapter 6.5 contains CHP regulations governing motor carrier safety. Article 6 contains the regulations relating to carrier requirements. Section 1230.5 is proposed to provide specifications for intermodal chassis inspection tags.

Senate Bill (SB) 1507 (Romero) was signed into law on September 26, 2002 (Chapter 897, 02), effective January 1, 2003. The bill amended the language of Section 34505.9, California Vehicle Code (VC), creating a statutory requirement for ocean marine terminal operators participating in the Intermodal Roadability Inspection Program, to affix tags to intermodal chassis indicating inspection results. The amended language requires a red tag affixed to each chassis that fails an inspection, and a green tag affixed to each chassis that passes an inspection. Further, the section directs the tags shall be provided by the ocean marine terminal operators and shall meet specifica-

tions determined by the CHP. The proposed regulation contains those specifications for the intermodal chassis inspection tags.

PUBLIC COMMENTS

Any interested person may submit written comments on the proposed action via facsimile at (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

California Highway Patrol
Commercial Vehicle Section—062
ATTN: Don Callaway
P. O. Box 942898
Sacramento, CA 94298-0001

Written comments must be received no later than 5:00 p.m., November 17, 2003.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by Commercial Vehicle Section (CVS) no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an Initial Statement of Reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling CHP at (916) 445-1865. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number, in case the requester's information is incomplete or illegible.

The rulemaking file is available for inspection at the California Highway Patrol, Commercial Vehicle Section, 444 North Third Street, Sacramento. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our website.

CONTACT PERSON

Any questions concerning the contents of the proposed regulations should be directed to Mr. Don Callaway or Mr. Gary Ritz, CHP, CVS, at (916) 445-1865. Inquiries regarding the substance of the proposed regulations should be directed to Mr. Don Callaway.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that the proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The CHP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The CHP has determined the proposed regulatory action may affect small businesses.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Section 34501 VC.

REFERENCE

This action implements, interprets, or makes specific Section 34505.9 VC.

TITLE 14. DEPARTMENT OF CONSERVATION

NATURAL RESOURCES CHAPTER 5. DIVISION OF RECYCLING

PAYMENT BY COUNT OF REFUND VALUE TO CONSUMERS

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 5, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 5. PROCESSORS

Article 3. Accounting and Reporting Requirements

§ 2430. PAYMENTS.

Subsection 2430(b): This amendment is necessary due to its reference to Subsection 2535(f), which has been renumbered to 2535(e), due to the deletion of Subsection 2535(c), which changed the numbering of subsequent sections for consistency.

SUBCHAPTER 6. RECYCLING CENTERS

Article 1. Requirements for Recycling Centers

§ 2501. LOAD INSPECTION REQUIREMENTS.

Subsection 2501(c): A change in reference to Section 2535(d) due to the deletion of Subsection 2535(c) would have normally been necessary, but due to its prior incorrect reference and the proposed restructure of Section 2535, a change in reference is no longer necessary.

Article 3. Accounting and Reporting Requirements

§ 2525. RECORDKEEPING.

Subsection 2525(a)(1): This amendment is necessary due to its reference to Subsection 2535(g), which has been renumbered to 2535(f), due to the deletion of Subsection 2535(c), which changed the numbering of subsequent subsections for consistency.

§ 2535. PAYMENTS TO CONSUMERS, CURBSIDE PROGRAMS, COMMUNITY SERVICE PROGRAMS AND DROPOFF OR COLLECTION PROGRAMS.

Subsection 2535(b): This amendment will clarify, for recycling center operators, that consumers may be paid refund value, by count, for more than a total of 50

empty beverage containers. In addition, adoption of the proposed changes to this subsection will increase the consumers' option of payment by count from "fifty empty beverage containers" to "up to fifty empty beverage containers of each material type", notwithstanding the total number of empty beverage containers contained in the aggregate load.

Subsection 2535(c): Deletion of this subsection is necessary for the restructure of this section. The amendment to subsection 2535(b) meets the requirements of current regulatory provisions of this subsection for payment of refund value for deliveries of fifty empty beverage containers or less to recycling centers.

Subsections 2535(d), (e), (f), (g): Renumbering these subsections is necessary to revise the letter designations of each subsection changed by the deletion of old Subsection 2535(c).

INFORMATION IS AVAILABLE UPON REQUEST

Copies of the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Eloisa Hernandez, at (916) 327-2757. General or substance questions regarding this file may also be directed to Karen Denz. The backup agency contact person for this rulemaking file is Karen Denz, who may be contacted at (916) 322-1899. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendment to the Department. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on November 17, 2003. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to: Eloisa Hernandez, Proposed Payment of Refund Value Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period,

written comments may also be E-mailed to: DORRegulations@consrv.ca.gov, or faxed to (916) 327-8668.

PUBLIC HEARING SCHEDULED

The hearing will begin promptly at 10:00 a.m. and will adjourn immediately after hearing the last public comment by those individuals present. The conference room is wheelchair accessible. The public hearing to record public comments on the proposed amended regulations is scheduled for:

November 17, 2003 at 10:00 a.m.
The Renaissance Tower
19th Floor Conference Room
801 "K" Street
Sacramento, CA 95814

SUBSTANTIAL REVISIONS WILL REQUIRE A RENOTICE

Following the public hearing, the Department will adopt the regulations without further notice. However, if the Department chooses to substantially alter or revise the proposed regulatory action, a revised notice, called a renote, and the amended version of the proposed text of the regulations will be made available to the public for another public comment period for fifteen (15) days prior to its adoption. Those persons who testified at the public hearing, submitted written comments at the public hearing, whose comments were received by the Department during the public comment period, or who requested notification from the Department of the availability of changes to the text of the proposed regulations, will be sent any renotices.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the existing law, the California Beverage Container Recycling and Litter Reduction Act (Act) encourages recycling of specific beverage containers and the reduction of littered beverage containers along the State's highways. Under this Act, the Department, through the Division of Recycling (Division), is responsible for administering the Act and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

The amendments to (CCR) Sections 2430, 2525, and 2535 will alleviate confusion among recycling center operators by: (1) clarifying that consumers may be paid by count for more than a total of 50 empty beverage containers; and (2) making recycling by count more consumer friendly, thus, providing consumers a greater incentive to recycle.

Adoption of the proposed amendments should reduce the ongoing complaints from consumers and confusion among operators on the Division's payment by count transaction requirements.

In addition, proposed amendments will further amend regulations to increase the consumers option of payment by count from “fifty empty beverage containers” to “up to fifty empty beverage containers of each material type”, notwithstanding the total number of empty beverage containers contained in the aggregate load. This new option should provide consumers a greater incentive to recycle and improve the Division’s potential for meeting its recycling rate goal, as mandated by the Act.

AUTHORITY

These regulations are submitted pursuant to the Department’s authority under Public Resources Code Sections, 14530.5 (b) and 14536.

REFERENCE

Public Resources Code Sections, 14572 and 14572.5.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations do not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary cost or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Cost or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language.

These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: Any cost impacts that a representative private person or business may incur in reasonable compliance with the proposed action can be mitigated.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will not affect small businesses. These proposed regulations serve to clarify and make specific existing requirements contained in statute. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarifies existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: www.consrv.ca.gov.

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4090, Sacramento, California, at 10:30 AM, November 19, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice,

must be received by the Board of Optometry at its office not later than 5:00 p.m. on November 17, 2003 or must be received by the Board of Optometry at the hearing. The Board of Optometry, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3025, 3025.5, and 3090 of the Business and Professions Code, and to implement, interpret or make specific sections 3025, 3025.5 and 3090 of said Code, and 16 Code of Federal Regulations 456.1 and 456.2, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows: Amendment to sections 1566 and 1566.1, Consumer Notice RE: Prescription Release.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

- (1) Section 1566: Assembly Bill (AB) 2020 (Correa, Chapter 814, Statutes 2002) revised the law by requiring optometrists to release patient's contact lens prescriptions. This proposal will revise an existing consumer notice to reflect this prescription release requirement
- (2) Section 1566.1: Present Section language lists Board contact information on an existing consumer notice that does not reflect the current office relocation. This proposal will update Board consumer contact information to reflect the current office location.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

BUSINESS IMPACT

The Board has made an initial determination that the proposed regulatory action would have no significant

statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: These proposed regulation amendments only pertain to the providing updated consumer rights and Board contact information on an existing notice.

IMPACT ON JOBS/NEW BUSINESSES

The Board of Optometry has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Board of Optometry is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Optometry has determined that the proposed regulations would not affect small businesses because the regulation amendments pertain to new consumer rights and updated Board information.

CONSIDERATION OF ALTERNATIVES

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Optometry has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to

the hearing upon request from the Board of Optometry at 400 R Street, Suite 4090, Sacramento, California 95814.

**AVAILABILITY AND LOCATION OF
THE FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rex Farmer
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 322-0961
Fax No.: (916) 445-8711
E-Mail Address: rex_farmer@dca.ca.gov

The backup contact person is:

Name: Jane Flint
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 323-8720
Fax No.: (916) 445-8711
E-Mail Address: jane_flint@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.optometry.ca.gov

TITLE. 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4090, Sacramento, California, at 10:15 AM, November 19, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Optometry at its office not later than 5:00 p.m. on November 17, 2003 or must be received by the Board of Optometry at the hearing. The Board of Optometry, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be

available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3023.1 and 3059, Business and Professions Code, and to implement, interpret or make specific sections, 3059 of said Code, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows: Amendment of section 1536, Continuing Education.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Assembly Bill 2771 (Alpert, Chapter 328, Statutes of 1996) and Senate Bill 929 (Polonco, Chapter 676, Statutes of 2000) respectively changed the Board's license renewal cycle from annual to biennial and continuing education (CE) hourly requirements for therapeutic pharmaceutical agent (TPA) certified optometrists. This proposal establishes CE license renewal requirement changes relative to the biennial and TPA optometrist renewal cycles and associated policy CE changes in self-study and initial licensure exemptions.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

BUSINESS IMPACT

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None.

IMPACT ON JOBS/NEW BUSINESSES

The Board of Optometry has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**COST IMPACT ON REPRESENTATIVE
PRIVATE PERSON OR BUSINESS**

The Board of Optometry is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Optometry has determined that the proposed regulations would not affect small businesses because these amendments propose to adopt regulatory language to conform with statutory changes that have already been implemented.

CONSIDERATION OF ALTERNATIVES

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

The Board of Optometry has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Optometry at 400 R Street, Suite 4090, Sacramento, California 95814.

**AVAILABILITY AND LOCATION OF
THE FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rex Farmer
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 322-0961
Fax No.: (916) 445-8711
E-Mail Address: rex_farmer@dca.ca.gov

The backup contact person is:

Name: Jane Flint
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 323-8720
Fax No.: (916) 445-8711
E-Mail Address: jane_flint@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.optometry.ca.gov

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4090, Sacramento, California, at 11:00 AM, November 19, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Optometry at its office not later than 5:00 p.m. on November 17, 2003 or must be received by the Board of Optometry at the hearing. The Board of Optometry, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3025, Business and Professions Code, and to implement, interpret or make specific sections, 3041 of said Code, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows: Adoption of section 1571, Lacrimal Irrigation and Dilation Procedure approval form.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Section 1571. Senate Bill (SB) 929, Chapter 626, Statutes of 2000) expanded the scope of therapeutic optometric practice (TPA) that included a provision for the Board to approve TPA certified licensees to independently perform lacrimal irrigation and dilation procedures. This new section will establish by reference the form optometrists are to submit to the Board when seeking approval to independently perform this procedure.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: none.

BUSINESS IMPACT

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None.

IMPACT ON JOBS/NEW BUSINESSES

The Board of Optometry has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE
PRIVATE PERSON OR BUSINESS

The Board of Optometry is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Optometry has determined that the proposed regulations would not affect small businesses because the proposed regulation only incorporates by reference a procedure approval form.

CONSIDERATION OF ALTERNATIVES

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its

attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Board of Optometry has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Optometry at 400 R Street, Suite 4090, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF
THE FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rex Farmer
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 322-0961
Fax No.: (916) 445-8711
E-Mail Address: rex_farmer@dca.ca.gov

The backup contact person is:

Name: Jane Flint
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 323-8720
Fax No.: (916) 445-8711
E-Mail Address: jane_flint@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.optometry.ca.gov

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4090, Sacramento, California, at 10:00 AM, November 19, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Optometry at its office not later than 5:00 p.m. on November 17, 2003 or must be received by the Board of Optometry at the hearing. The Board of Optometry, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3025, 3044, 3045, 3047, 3075, 3152, and 3152.2 of the Business and Professions Code, and to implement, interpret or make specific sections 3044, 3045, 3075, 3125, 3152, and 3152.5 of said Code, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows: Amendment of sections 1523 and 1524, Licensure Application and Fee.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

- (1) Section 1523: A 2002 amendment to Division 15, Title 16, California Code of Regulations (CCR) section 1531 eliminated the Board's practical examination and established a national testing organization's practical examination for licensure. This proposal will incorporate by reference associated license application title and fee revisions.
- (2) Section 1524: A 2002 amendment to CCR section 1531 eliminated the Board's practical examination and established a national testing organization's practical examination for licensure. The Board proposes a commensurate reduction in the fee for licensure relative to the elimination of its practical examination.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

BUSINESS IMPACT

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None.

IMPACT ON JOBS/NEW BUSINESSES

The Board of Optometry has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Board of Optometry is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Optometry has determined that the proposed regulations would not affect small businesses because the regulation amendment pertains to a license application fee only applicable to licensure candidates.

CONSIDERATION OF ALTERNATIVES

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Optometry has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Optometry at 400 R Street, Suite 4090, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rex Farmer
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 322-0961
Fax No.: (916) 445-8711
E-Mail Address: rex_farmer@dca.ca.gov

The backup contact person is:

Name: Jane Flint
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 323-8720
Fax No.: (916) 445-8711
E-Mail Address: jane_flint@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.optometry.ca.gov

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing

relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4090, Sacramento, California, at 10:45 AM, November 19, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Optometry at its office not later than 5:00 p.m. on November 17, 2003 or must be received by the Board of Optometry at the hearing. The Board of Optometry, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 3025, 3025.5, 3041, and 3041.2 of the Business and Professions Code, and to implement, interpret or make specific sections 3027.5, 3041, 3041.1, 3041.3, 3059, 3096.5, 3108, 3109, 3152.5, 4033, 4051 and 4052 of said Code, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows: Amendment of sections 1567, 1568 and 1569, Therapeutic Pharmaceutical Agents.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Section 1567. This amendment will incorporate language in Business and Professions (B&P) Code section 3041 that adds therapeutic drugs (agents) to the list of pharmaceuticals optometrists are authorized to prescribe; define "treat" as applied to the usage of those agents; and define "approval" relative to Board authorization to perform lacrimal irrigation and dilation procedures on patients over twelve years of age.
2. Section 1568. This amendment will incorporate language in B&P Code section 3059 that requires optometrists who are certified to prescribe Therapeutic Pharmaceutical Agents to complete 35 of the required 50 hours of continuing education in diagnosis, treatment, and management of ocular disease. The proposed language also specifies the number of hours to be designated for training on particular conditions or diseases.

3. Section 1569. This amendment deletes previous conditions and optometrist/medical doctor protocols for peripheral infectious corneal ulcers and provides for the treatment of additional conditions, laboratory tests, the performance of new and further defined procedures. It also prohibits the use of injections except for auto-injectors to counter anaphylaxis and treatment of patients with AIDS.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: none.

BUSINESS IMPACT

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None.

IMPACT ON JOBS/NEW BUSINESSES

The Board of Optometry has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Board of Optometry is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Optometry has determined that the proposed regulations would not affect small businesses because the amendments conform with statutory language that has already been implemented.

CONSIDERATION OF ALTERNATIVES

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or

would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Optometry has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Optometry at 400 R Street, Suite 4090, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rex Farmer
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 322-0961
Fax No.: (916) 445-8711
E-Mail Address: rex_farmer@dca.ca.gov

The backup contact person is:

Name: Jane Flint
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 323-8720
Fax No.: (916) 445-8711
E-Mail Address: jane_flint@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.optometry.ca.gov

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING DISCIPLINARY GUIDELINES

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

Southern California
November 19, 2003, 10:00 a.m.
Bureau of Automotive Repair
1180 Durfee Avenue, Suite 120
Conference/Training Room
South El Monte, CA 91733

Northern California
November 21, 2003, 10:00 a.m.
Contractors State Licensing Board
9821 Business Park Drive
Hearing Room
Sacramento, California 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on November 21, 2003, or must be received by the Bureau at the above referenced hearings. The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 9882 of the Business and Professions Code and Section 11425.50 of the Government Code; and to implement, interpret or make specific Section 9882 of the Business and Professions Code and Section 11425.50 of the Government Code; the Bureau is proposing to adopt the following changes to Chapter 1 of Division 33 of Title 16 of the California Code of Regulations:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Bureau of Automotive Repair was established within the California Department of Consumer Affairs in 1972. The Bureau was created by Chapter 1578, Statutes of 1971 (Senate Bill 51, Beilenson), which mandated a statewide consumer protection program for automotive repair.

Through its statewide offices, the Bureau conducts consumer protection services related to automotive repair. Bureau representatives register and regulate automotive repair dealers, accept and mediate auto repair complaints from the public, investigate violations of the Automotive Repair Act (Business and Professions Code Section 9880, et seq.) and, when appropriate, refer cases to law enforcement authorities for prosecution. Specifically, Section 9889.5 provides the basic statutory authority under which the Bureau may take disciplinary action against its licentiates.

The Bureau's disciplinary guidelines have been in existence for over two decades. They were developed to assist Administrative Law Judges in imposing the most appropriate penalty upon a licensee who has been found to have violated the Bureau's laws and regulations. The guidelines also serve to assist Deputy Attorneys General in fashioning appropriate terms and conditions for stipulated settlement agreements in uncontested cases. Another function of the guidelines is to inform and educate licentiates concerning the potential consequences of illegal activities.

Legislation that went into effect January 1, 1996, (SB 523, Kopp [Ch. 938, Stats. 1995]) required licensing agencies, like BAR, who utilize administrative disciplinary guidelines to adopt those guidelines in regulation in accordance with the Administrative Procedures Act. (See Gvt. Code § 11425.50(e)) In July 1997, the Bureau's adoption of its guidelines, as revised in May 1997, became effective with the approval of Section 3395.4 of the California Code of Regulations by the Office of Administrative Law.

The Bureau no longer issues Notices of Violation. Therefore, it is not appropriate to list such notices as a factor to be considered in aggravation in a disciplinary case.

The majority of the disciplinary orders issued in the Bureau's administrative disciplinary cases include an award for cost reimbursement pursuant to Business and Professions Code section 125.3. However, there has been little or no consistency in these awards with respect to how and when payments are to be made. This has made it confusing for the respondent licensee who must pay; and difficult, time consuming and more costly for the Bureau in collecting the awards. In order

to achieve some level of consistency, the Bureau wishes to include in its guidelines a recommended term and condition of probation for orders that include an award of costs pursuant to Business and Professions Code section 125.3.

Since the May 1997 revision of the Bureau's *Guidelines for Disciplinary Penalties and Terms of Probation*, several new regulations have been adopted which, if violated by a licentiate, could result in the filing of formal administrative disciplinary actions. These regulations are not included in the penalty section of the guidelines, but should be. There are also other statutes and regulations that were previously omitted from the penalty guidelines that the Bureau now wishes to add.

CURRENT REGULATION

Section 3395.4 provides that, in reaching a decision on a formal administrative disciplinary action, the Bureau shall consider its disciplinary guidelines entitled *Guidelines for Disciplinary Penalties and Terms of Probation* [May 1997], which are incorporated by reference. This section further provides that these guidelines are advisory and may be deviated from when the Bureau, in its sole discretion, determines that the facts of a particular case warrant such deviation.

EFFECT OF REGULATORY ACTION

The proposed action will make the following changes to existing regulation:

1. Amends Section 3395.4 by incorporating by reference the Bureau's *Guidelines for Disciplinary Penalties and Terms of Probation*, as revised September 2003.
2. Revises the *Guidelines for Disciplinary Penalties and Terms of Probation* by deleting from the section on Factors in Aggravation, any reference to Notices of Violation.
3. Revises the *Guidelines for Disciplinary Penalties and Terms of Probation* by adding to Section III. Standard Terms and Conditions of Probation, a recommend condition of probation for cases in which cost reimbursement is awarded pursuant to Business and Professions Code section 125.3.
4. Revises the *Guidelines for Disciplinary Penalties and Terms of Probation* by adding statutes and regulations to Section IV. Penalty Guidelines, that were either not included or did not exist at the time of the last revision in May 1997.
5. Revises the *Guidelines for Disciplinary Penalties and Terms of Probation* by making minor editorial, grammatical and technical changes primarily for clarification purposes.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to Any Local Agency or School district for Which Government code Section 17561 Requires Reimbursement: None.

BUSINESSES IMPACT

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the Bureau's laws and/or regulations. That potential "adverse economic impact" may be avoided simply by complying with the law.

IMPACT ON JOBS/NEW BUSINESSES

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS

None.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative to the regulation would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 10240 Systems Parkway, Sacramento, California 95827.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the Bureau of Automotive Repair at the address mentioned above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

James Allen, Regulations Analyst
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-3460
Fax No.: (916) 255-1369
E-mail: jim_allen@dca.ca.gov

The backup contact person is:

Debbie Romani, Staff Services Manager
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-3460
Fax No.: (916) 255-1369
E-mail: debbie_romani@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can also be found on the Bureau's website at www.autorepair.ca.gov or www.smogcheck.ca.gov.

TITLE 16. PHYSICIAN ASSISTANT COMMITTEE

NOTICE IS HEREBY GIVEN that the Physician Assistant Committee is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 1424 Howe Avenue, Greg Gorges Conference Room, Sacramento, California, at 10:00 a.m., on 20 November 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physician Assistant Committee at its office not later than 5:00 p.m. on 17 November 2003 or must be received by the Physician Assistant Committee at the hearing. The Physician Assistant Committee, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 125.9, 148, and 3510 of the Business and Professions Code, and to implement, interpret or make specific Sections 125.9, 148, 3502, and 3502.1 of said Code, the Physician Assistant Committee is considering changes to Division 13.8 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 1399.544.

Section 1399.540 of the California Code of Regulations requires that a Delegation of Services Agreement be adopted by a physician assistant and his or her supervising physician. Additionally, a physician assistant and his or her supervising physician may adopt protocols as set forth in section 1399.545.

Section 3502.1 of the Business and Professions Code requires that a supervising physician who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection.

This proposal would require that the Delegation of Services Agreement, written protocols, and formulary be maintained at all practice sites where the physician assistant practices.

Additionally, this proposal would require that, if requested, the Delegation of Services Agreement, protocols, and formulary be made available to any agent of the Physician Assistant Committee, Medical Board of California, or Osteopathic Medical Board.

Amend Section 1399.571.

The existing regulation specifies that the executive officer may issue citations for violations of specific code sections listed in section 1399.571.

This proposal would add violation of section 1399.544 to the list of citable offenses.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

BUSINESS IMPACT

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it only affects individual licensees.

The following studies/relevant data were relied upon in making the above determination: None.

IMPACT ON JOBS/NEW BUSINESSES

The Physician Assistant Committee has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Physician Assistant Committee is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Physician Assistant Committee has determined that the proposed regulations would not affect small businesses because it only affects individual physician assistant licensees.

CONSIDERATION OF ALTERNATIVES

The Physician Assistant Committee must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Physician Assistant Committee has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Physician Assistant Committee at 1424 Howe Avenue, Suite 35, Sacramento, California 95825-3237.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Glenn L. Mitchell
Address: 1424 Howe Avenue, Suite 35
Sacramento, CA 95825-3237
Telephone No.: (916) 263-2670 ext. 203
Fax No.: (916) 263-2671
E-Mail Address: gmittchell@medbd.ca.gov

The backup contact person is:

Name: Richard L. Wallinder
 Address: 1424 Howe Avenue, Suite 35
 Sacramento, CA 95825-3237
 Telephone No.: (916) 263-2670 ext. 202
 Fax No.: (916) 263-2671
 E-Mail Address: rwallinder@medbd.ca.gov

Website Access: Materials regarding this proposal can be found at: www.physicianassistant.ca.gov.

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING FOR THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM

NOTICE IS HEREBY GIVEN that the Department of Housing and Community Development ("Department") proposes to: (1) formally amend regulations, which govern implementation of the State Home Investment Partnerships Program (HOME) 2). Adopt a new regulation on Repayment of HOME funds, Program Income and Recaptured Funds; 3) Repeal sections no longer applicable to the program. The existing regulations are codified in Title 25, Subchapter 2 (commencing with section 8200) of the California Code of Regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action by the Department. The written comment period begins Friday, October 3, 2003 and closes at 5:00 p.m. on Monday, November 17, 2003. The Department will consider comments received during this timeframe. Please address your e-mail comments to Sharon Fleury at Home@hcd.ca.gov. Written comments can also be sent via mail to Sharon Fleury, Department of Housing and Community Development, P.O. Box 952054, Sacramento, California 94252-2054, or via fax to (916) 322-2904, attention: Sharon Fleury.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is scheduled for Monday, November 17, 2003, commencing at 10:00 a.m. at the Department's Sacramento Office, Room 183, 1800 Third Street, Sacramento, California. Any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest below. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimonies at the hearings.

AUTHORITY AND REFERENCE

HCD is conducting this rulemaking activity pursuant to the authority provided by Health and Safety Code Sections 50406 and 50896.3(b). These regulations implement, interpret and make specific amendments to Chapter 12 (commencing with Section 50896) of Part 2 of Division 31 of the Health & Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code 50407 establishes that the California Department of Housing and Community Development (Department) is responsible for coordinating federal-state relationships in housing and community development. In conjunction with this responsibility, Health and Safety Code section 50406 directs the Department to be responsible for the allocation of Federal Home Investment Partnership Program funds. Consequently, the State of California receives money from the U.S. Department of Housing and Urban Development to make grants to eligible cities and counties and direct loans to private nonprofit organizations that qualify as Community Housing Development Organizations (CHDOs). These regulations establish procedures for the award and disbursement of HOME funds and establish policies and procedures for the use of these funds to meet the purposes contained in Title II of Public Law No. 101-625, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended by the Housing and Community Development Housing Act of 1992, Public Law No. 102-550. These funds can be used for a variety of housing-related uses provided the State, the cities and counties and the CHDOs comply with a comprehensive set of requirements prescribed by the Federal government regulations in 24 CFR part 92.

A major purpose of these regulations is to revise the HOME Program application to bring it up to date and incorporate key instructions from the application in doing so the program proposes to remove the Application from regulations and replace it with a description of what is required. The changes are also in response to Congressional pressure on HUD to spend money faster and that the State HOME program needs to look at ways to encourage our contractors to spend their HOME funds faster.

The proposed changes were published in the Department's Annual Action Plan of the State Five-Year Consolidated Plan for Fiscal Years 2001-02 and 2002-03 and meetings with client representatives were also held to discuss changes, alternatives and possible impact of changes.

Following is a summary of the more substantive amendments this proposal covers:

Section 8201. Definitions—contains the definitions of commonly-used terms which have been modified, removed or added to clarify the proposed changes.

- Adds activity definitions and combines some activities.
- Imposes limits on rental rehabilitation programs where no more than 40% of award may be made to a specific project—requiring at least 3 projects be funded.
- Prohibits site changes after an award for rental housing new construction.
- Formalizes Conditional Reservation process.

Section 8204. Eligible Applicant—covers eligible applicants and requirements they must meet to apply for HOME funds. Provisions added include 1) certain requirements from the application form, which was heretofore incorporated by reference into regulation; 2) submittal of a Non-Debarment or Suspension certification and A-133 Single Audit Report certification to address the Bureau of State Audits findings; and 3) requirements for CHDO applicants.

Section 8204.1. CHDO Certification—new certification criterion require CHDOs to describe relationships with for-profit entities and identify geographical areas served in their bylaws, submit a business plan, adds language about debarred contractors, and recertification requirement upon receipt of new funds and/or annually.

Section 8205. Use of Funds—creates two subsections: (a) identifies eligible activities and (b) sets minimum and maximum interest rates and other criteria for loans made by the HOME program; also divides subsection (b) to address financing requirements for (A) loans to CHDOs, (B) loan's made by CHDOs approved to retain CHDO proceeds (a new provision pursuant to section 8206.1(c)), and (C) loans made by State Recipients.

Section 8206. Matching Contributions—deletes subsection (d) removing the language concerning repayments, which is now contained in section 8206.1.

Section 8206.1. Repayment of HOME Funds, Program Income and Recaptured Funds—is being adopted to detail specific requirements addressed in federal regulations regarding program income, repayments of HOME funds, and recaptured HOME funds. This section also addresses the program's selection of the recapture method, an option provided in the federal regulations pursuant 24 CFR 92.254(a)(5); and provisions to allow program income, recaptured funds, and proceeds to be retained by CHDOs that meet qualifying criteria defined in this section.

Section 8207. Amount of HOME Assistance—establishes a \$5000 minimum HOME investment per unit, imposes loan terms and finance requirements for first-time homebuyer loans; and requires an updated sources and uses within 15 days of obtaining permanent financing commitments and 45 days prior to anticipated loan closing.

Section 8208. Affordability Requirements—increases the required periods of affordability for rehabilitation of existing rental rehabilitation 5 years for each category and sets a minimum of 55 years for rental new construction, rental acquisition, and rental acquisition with rehabilitation regardless of the amount of investment.

Section 8210. Application Process—the purpose of the proposed changes in this section are to: 1) eliminate redundancy in the regulations; 2) provide correct cross reference in the regulations; 3) provide the State the option to issue more than one NOFA per year; 4) delete language requiring the Department to solicit applications from larger cities and counties who receive funds directly from HUD; and 6) removes language that indicates an applicant is approved at specified amounts, rates and terms.

Section 8211. Application Requirements/Form—removes the application form incorporated in the regulations by reference and describes the specific criteria required in the HOME Program application.

Section 8212. Application Selection and Evaluation—establishes threshold, and the rating and ranking criteria used to evaluate the applications.

Section 8212.1. Allocation by Type of Activity and Rural Location—This section describes the method of allocation for HOME funds used by the Department; amended solely to correct references, as required.

Section 8213. Conditional Reservation of Funds—the changes in this section reflects the fact the department will now be issuing conditional reservations; establishes that a minimum number of points are required for an application to be ranked; and removes the requirement that a certain number of points must be received before being eligible for additional bonus points.

Section 8214. Legal Documents—is being amended to comply with HUD requirements and to make it clear that the department will not execute a standard agreement committing funds until a recipient has complied with requirements set forth in the conditional reservation letter and move finance commitment deadlines to 8217(b)(1)(A).

Section 8215. Project Set-Up and disbursement of Funds—changes in this section consist solely of changing the term "C/MI" to "the federal disbursement and information system", as discussed in section 8201.

Section 8216. Reporting and Recordkeeping—changes in this section consist solely of changing the term “C/MI” to “the federal disbursement and information system”, as discussed in section 8201.

Section 8217. Project Deadlines and Expenditure Milestones—adds the definition and requirements for the fast-track milestone schedule, incorporated in section 8212; changes the project deadlines contained in 8217(b) and the standard expenditure milestone requirements set forth in 8217(c); moves from section 8214(a)(1)(M) the permanent financing commitment deadline and reduces it to 12 months; and reduces the amount of HOME funds a contractor can apply for in cases where the contractor has missed one or more milestones. The Title of this section is being amended to “Project” deadlines, rather than “Set-up” deadlines due to the fact that the deadlines stated in the section extend beyond set-up.

Subsection 8217(d) and Section 8217.1—are being deleted to promote greater simplicity and less confusion in the regulations. They apply to contracts entered into prior to 2000, now that all of these contracts have passed their last milestones; the language is no longer needed.

Section 8217.1. Identification and Set-up Deadlines for Contracts Numbered Prior to 1999—the entire section is being deleted as it is no longer needed as addressed above under subsection 8217(d) and section 8217.1.

Section 8219. State Recipient Administration of CHDO Local Programs—This entire section is being deleted due to the proposed provision allowing program income, recaptured funds, and proceeds to be retained by CHDOs who meet the qualifying criteria, as discussed in new section 8206.1.

IMPACT OF PROPOSED REGULATIONS

LOCAL MANDATE

Federal Law mandates the requirements. The Department has determined that these regulations do not impose a mandate on local agencies or school districts. Eligibility for the program is limited to entities demonstrating willingness and capacity to develop affordable housing. In any case participation in the program is voluntary.

FISCAL IMPACT

The Department has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in Federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action has no significant impact on housing costs in California.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has determined that the regulations will not affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California. In any case, participation in the program would be voluntary.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While private businesses (including nonprofits) and individuals are eligible to receive program funds under the program, participation is voluntary.

AFFECT ON SMALL BUSINESS

The proposed regulations do not affect small business. The HOME program is a voluntary program, providing grants to local governments and low interest loans to non-profit housing development corporations who choose to apply.

CONSIDERATION OF ALTERNATIVES

The Department of Housing and Community Development must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

The text of the proposed regulations is available upon request, along with the Initial Statement of Reasons, prepared by the Department, which provides the reasons for the proposals, is available on the

Department's web site, at www.hcd.ca.gov. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Sharon Fleury at the address and telephone number noted below.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Sharon Fleury at the address indicated below. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF
RULEMAKING DOCUMENTS**

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person named below.

CONTACT PERSON

HCD: **SHARON FLEURY**
(916) 327-3621

HCD BACK-UP: **LENORA FRAZIER**
(916) 323-7288

HCD Address: **State Department of Housing
and Community Development
1800 Third Street, Room 390
Sacramento, California 95814**

HCD Website: Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations may be accessed through our website at www.hcd.ca.gov.

HCD Facsimile No: **(916) 322-2904**

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period. Direct inquiries concerning the substance of the proposed rulemaking action and any requests for the documents noted above should be made to:

Sharon Fleury, HOME Program Specialist
**Department of Housing
and Community Development**
1800 Third Street, Suite 390
Sacramento, California 95814
Telephone (916) 327-3621
Fax No.: (916) 322-2904
E-mail: sfleury@hcd.ca.gov

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CONSISTENCY/INCONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1
Tracking No. 2080-2003-018-05

PROJECT: Replacement of the Interstate 5
Bridge over the Santa Clara River

LOCATION: City of Valencia, north Los Angeles
County

APPLICANT: California Department of
Transportation (Caltrans)

BACKGROUND

The project involves replacing the existing Interstate 5 (Golden State Freeway) bridges over the Santa Clara River (Bridge No. 53-687 R/L) with a single structure consisting of 10 traffic lanes. The

project has the potential to affect the least Bell's vireo (*Vireo Bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), species listed as endangered under the California Endangered Species Act (Fish and Game Code sections 2050 et seq.). The unarmored threespine stickleback is also a fully protected species under California Fish and Game Code, Section 5515. On July 19, 2001, the Department of Fish and Game (Department) issued a Consistency/Inconsistency Determination for the biological and conference opinion (1-8-00-F/C-68) for the project, as originally designed.

After one year of project construction, Caltrans determined that an expanded work area and more time would be needed in order to complete the project, and reinitiated consultation with the U.S. Fish and Wildlife Service (Service) for additional impacts to the affected species. The Service issued biological opinion 1-8-03-F-22R to the Federal Highway Administration on August 1, 2003. This opinion sets forth measures to mitigate the original and additional impacts to the least Bell's vireo, southwestern willow flycatcher, and unarmored threespine stickleback and their habitats. On August 12, 2003, the Director of the Department of Fish and Game received a notice from Caltrans seeking a determination pursuant to section 2080.1 of the Fish and Game Code that the new biological opinion was consistent with the California Endangered Species Act.

DETERMINATION

After reviewing the above-referenced biological opinion and other relevant documents, the Department has determined that federal biological opinion 1-8-03-F-22R is consistent with the California Endangered Species Act for the least Bell's vireo and southwestern willow flycatcher because the project and measures described in the opinion meet the conditions set forth in Fish and Game Code sections 2081(b) and (c) for issuance of an incidental take permit for those species. The Department specifically finds that the mitigation measures identified in the biological opinion will minimize and fully mitigate the project's potential impacts on the least Bell's vireo and southwestern willow flycatcher. These measures include, but are not limited to, the following requirements:

1. Caltrans will mitigate offsite for permanent and temporary impacts through purchase and restoration of a 230-acre parcel of land on the Santa Clara River adjacent to the City of Santa Paula. The restoration of the entire parcel will occur in phases, with mitigation for the bridge replacement occur-

ring first. To mitigate the 1.28 acres of permanent impact to riparian habitat, Caltrans will restore/create 12.8 acres of riparian habitat (10:1 ratio). To mitigate the 3.3 acres of temporary impact to riparian/transitional upland habitat, Caltrans will restore 16.5 acres of riparian/uplands buffer (5:1 ratio). Caltrans will also remove exotic plants from this parcel as part of the restoration effort. Caltrans plans to use other portions of the 230-acre site to propose other mitigation for future projects.

2. Caltrans will limit construction to defined areas, and all necessary clearing of riparian vegetation within the project's defined area must be completed outside of least Bell's vireo and southwestern willow flycatcher nesting season.
3. Caltrans will recontour the streambed to its pre-project condition and revegetate areas disturbed by the project. Success criteria will include 90% cover for riparian species and 75% cover for upland species to be accomplished within five years. Caltrans will replant one time in the event the plantings are lost during a storm.
4. Caltrans will transfer \$300,000 to the U.S. Forest Service's Team *Arundo* program for removal of at least six acres of giant reed (*Arundo donax*) to improve the habitat condition in San Francisquito Canyon, an important tributary to the Santa Clara River.

It is the Department's determination that the federal biological opinion is **not consistent with the California Endangered Species Act for the unarmored threespine stickleback**. Section 5515 of the Fish and Game Code prevents the Department from authorizing incidental take of the unarmored threespine stickleback pursuant to the California Endangered Species Act. The biological opinion is inconsistent because it authorizes take of unarmored threespine stickleback that is prohibited under state law.

Measures to mitigate project impacts to unarmored threespine stickleback habitat have been outlined in the Department's Streambed Alteration Agreement No. 5-258-00 issued for the project on December 1, 2000. Additional measures have been included in the new Streambed Alteration Agreement for the project (R5-2003-0048). As part of the new Agreement, a Department-approved stickleback expert will monitor all construction activities in or near the wetted portions of the channel. The monitor has authority to stop work if necessary to assure that mortality to individuals of the species is avoided. Other biological monitors will be onsite during all other phases of construction to ensure that Caltrans and its contractors comply with all measures to protect aquatic species. The Department has determined that, with full implementation of the

mitigation measures described in the biological opinion and the Streambed Alteration Agreement, incidental take of unarmored threespine stickleback will be avoided.

Pursuant to section 2080.1 of the Fish and Game Code, incidental take authorization under the California Endangered Species Act will not be required for incidental take of the least Bell's vireo or southwestern willow flycatcher as a result of the project. However, state law prohibits take of the unarmored threespine stickleback, and the project cannot result in mortality of individuals of this species. Any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, will require Caltrans to obtain a new consistency determination or a CESA incidental take permit from the Department for the vireo and flycatcher.

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR SR101/Rattlesnake Creek Culvert Repair Project Mendocino County

The Department of Fish and Game ("Department") received notice on September 8, 2003 that the California Department of Transportation ("Caltrans") proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of the repair and improvement of two culverts under state route 101 at post-mile 83.99 in Mendocino County. Activities will also include repairs to the upstream debris rack, renovation of the outlet weir, and reconstruction of the access road. The activities will impact riparian habitat and in-water fish habitat.

The National Marine Fisheries Service ("NOAA Fisheries") issued a no jeopardy federal biological opinion (151422SWR02SR8263:TKD) to the U.S. Army Corps of Engineers ("Corps") on May 16, 2003 which authorizes incidental take of the federally threatened Southern Oregon/Northern California Coast ESU Coho Salmon (*Oncorhynchus kisutch*) and coastal California Chinook Salmon (*Oncorhynchus tshawytscha*).

Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination that biological opinion 151422SWR02SR8263:TKD is consistent with CESA. If the Department determines that the federal biological opinion is consistent, Caltrans will not be required to obtain a separate incidental take permit under Fish and Game Code section 2081 for the project.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

Tracking Number 2080-2003-019-01

PROJECT: State Route 299 Sacramento River
Bridge Replacement Project

LOCATION: Redding, Shasta County

NOTIFIER: Department of Transportation,
District 2, Redding

BACKGROUND

The Department of Transportation ("Caltrans") is proposing to replace the bridge over the Sacramento River on State Route ("SR") 299 and construct a new access ramp from Dana Drive onto SR 299. In addition, Caltrans plans to add east and westbound lanes to SR 299, replace the Auditorium Drive overcrossing, widen the Continental Street overcrossing, repave SR 299 to East Street and a portion of Butte Street, and construct a two-way bike path between Turtle Bay and Dana Drive/Hilltop Drive ("project"). The project will remove approximately 2.6 acres of riparian vegetation and add sediment and petroleum-based products to the Sacramento River. Also, the project could result in the incidental take of Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), which are listed as endangered under the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.) and the Endangered Species Act ("ESA") (16 U.S.C. § 1531 et seq.), and Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), which are listed as threatened under CESA and ESA. Finally, the project could cause temporary adverse impacts to salmon spawning and rearing habitat near the bridge site.

Because of the project's potential for take of listed winter- and spring-run Chinook salmon, the Federal Highway Administration ("FHWA") consulted with the National Oceanic and Atmospheric Administration Fisheries Service ("NOAA Fisheries"), as required by the ESA. On August 20, 2002, NOAA Fisheries issued to FHWA a "no jeopardy" biological opinion (SWR-01-SA-5638:HLB) ("biological opinion"). The biological opinion describes the project and sets forth measures to mitigate impacts to winter- and spring-run Chinook salmon. On August 18, 2003, the Director of the Department of Fish and Game ("Department") received a notice from Caltrans's District 2 Office in Redding pursuant to Fish and Game Code section 2080.1 requesting a determination that the biological opinion is consistent with CESA.

DETERMINATION

The Department has determined that the biological opinion is consistent with CESA because the project and mitigation measures it describes meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of species protected under CESA. Specifically, the Department finds that the take of listed winter-run and spring-run Chinook salmon will be incidental to an otherwise lawful activity (i.e., replacement of an existing state highway bridge); the mitigation measures identified in the biological opinion will minimize and fully mitigate the impacts of the authorized take of listed winter-run and spring-run Chinook salmon; and the project will not jeopardize the continued existence of listed winter-run and spring-run Chinook salmon. The minimization and mitigation measures in the biological opinion include, but are not limited to, the following:

1. To minimize effects from increased turbidity and sedimentation, Caltrans shall meet the Central Valley Regional Water Quality Control Board's water quality objectives for the Sacramento River Basin. The contractor will develop a Storm Water Pollution Prevention Plan approved by Caltrans to ensure that water quality control measures will be implemented before, during, and after bridge construction.
2. Caltrans will mitigate for temporary and permanent losses of riparian vegetation by planting replacement riparian vegetation at a site along lower Sulphur Creek. Sulphur Creek is a tributary to the Sacramento River with their confluence located approximately one mile upstream of the bridge site. Caltrans shall also restore riparian zones that are temporarily impacted by the project.
3. All percussive and in-channel work is restricted to the period between September 15 and April 15. If required by the contractor, percussive work may be started on September 1 if surveys demonstrate that there are no winter-run Chinook salmon redds within 200 yards upstream or downstream of the bridge.
4. Caltrans will construct a gravel work pad containing clean, washed, one to four-inch wide gravel on the eastern side of the bridge. This pad, which must be in place prior to May 1 but no earlier than April 15, shall prevent salmon from spawning in the project area during construction by covering potential spawning habitat and by creating unsuitable flow conditions along the eastern side of the bridge. The gravel pad will be allowed to wash out following completion of the bridge construction to augment existing spawning gravel supplies downstream.

5. Caltrans will maintain upstream and downstream anadromous fish passage at all times. Caltrans will not conduct percussive work at night to allow quiet conditions during peak fish migration periods.
6. Qualified fisheries biologists will monitor coffer dam dewatering for the purpose of capturing and relocating any stranded salmonids.

Pursuant to Fish and Game Code section 2080.1, no authorization will be required under CESA for incidental take of winter-run and spring-run Chinook salmon for the project, provided Caltrans implements the project as described in the biological opinion and Caltrans complies with the mitigation measures and other conditions described in the biological opinion. If there are any substantive changes to the project, including changes to the mitigation measures, or if NOAA Fisheries amends or replaces the biological opinion, Caltrans will be required to obtain a new consistency determination or CESA incidental take authorization from the Department.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

Tracking Number 2080-2003-020-05

PROJECT: Talega Master Planned Community
Phase II

LOCATION: City of San Clemente, Orange County

NOTIFIER: Talega Associates, LLC

BACKGROUND

Talega Associates, LLC, is planning to construct single-family residences and associated developments within the City of San Clemente and the County of Orange. The Talega development is located in the Southern Orange County NCCP planning area and encompasses a total of 3,510 acres north and south of Avenida Pico. The Talega property is bordered by the Forster development to the west, the Prima Deshecha Landfill and Rancho Mission Viejo ("RMV") to the north, the Donna O'Neill Land Conservancy (also called "Talega Reserve") and Camp Pendleton to the east, and the Pacific Golf Course and Rancho San Clemente to the south.

The action would adversely affect approximately 283 flowering stalks of thread-leaved brodiaea (*Brodiaea filifolia*, "brodiaea") inhabiting the northeastern portion of the Talega property. Brodiaea is listed as an endangered species under the California Endangered Species Act (Fish & G. Code, § 2050, *et seq.*;

"CESA") and a threatened species under the federal Endangered Species Act (16 U.S.C., § 1531, *et seq.*). On February 21, 2002, the U.S. Fish and Wildlife Service issued Biological Opinion #1-6-01-F-1226 describing the project actions and setting forth measures to mitigate impacts to brodiaea and its habitat. On August 20, 2003, the Director of the California Department of Fish and Game ("Department") received a notice from Mr. Mark R. McGuire, a representative of Talega Associates, LLC, seeking a determination pursuant to section 2080.1 of the Fish and Game Code that the biological opinion was consistent with CESA.

DETERMINATION

After reviewing the above-referenced biological opinion and other relevant documents, the Department has determined that Biological Opinion #1-6-01-F-1226 is consistent with CESA because the proposed project and mitigation and minimization measures meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorization of incidental take of species protected under CESA. Measures incorporated into the project and described in the federal biological opinion issued by the United States Fish and Wildlife Service ("USFWS") include the following elements:

1. Preparation and implementation of a brodiaea transplantation and habitat restoration plan ("Plan") that will result in the transplantation of at least 250 individual plants from both known brodiaea locations within the Talega Phase II project footprint. The Plan will also require Talega Associates to:
 - a. Identify the proposed transplantation site, address site preparation, and identify methods for locating individual corms for transplant and removing blocks of soil containing high concentrations of corm clusters for population augmentation and habitat site enhancement;
 - b. Initially monitor transplanted populations for at least 5 years and establish criteria and contingency measures for determining and ensuring successful establishment of the transplanted population;
 - c. Develop a funding mechanism to ensure the restoration site will be preserved and managed in perpetuity.
2. The brodiaea population will not be disturbed until the USFWS and Department approve the Plan.

Department staff has worked with the project applicant to prepare the Plan and to ensure that the Plan outlines specific monitoring and maintenance tasks and the anticipated costs for implementation and long-term management. Security acceptable to, and in

favor of, the Department will be provided by the applicant to secure the performance of the monitoring and management effort. The applicant has also committed to providing a draft conservation easement that is consistent with Department standards. Performance standards in the Plan will ensure no diminution of functional capability of habitat to support the species, and commits the applicant to produce at least 283 flowering plants by the end of the monitoring period. However, as provided in the biological opinion, the brodiaea population will not be disturbed before the USFWS and the Department provide written approval to the applicant that the Plan is acceptable.

Pursuant to section 2080.1 of the Fish and Game Code, no CESA permit will be required for incidental take of *Brodiaea filifolia* as a result of the project. However, if the described project or any of the mitigation measures are changed, the USFWS substantively amends the existing biological opinion, or the USFWS prepares a new biological opinion that replaces the existing one, Talega Associates, LLC will be required to obtain a new consistency determination or an incidental take permit from the Department.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

HOUSEHOLD HAZARDOUS WASTE UNIT REGULATORY AND PROGRAM DEVELOPMENT DIVISION PUBLIC NOTICE FOR VARIANCE ISSUANCE

On September 12, 2003, the Regulatory and Program Development Division of the Department of Toxic Substances Control (DTSC) issued a conditionally exempt small quantity generator (CESQG) transportation and manifesting variance to Central Contra Costa Sanitary District. Authority for this action is contained in Health and Safety Code (HSC), section 25143. The variance authorizes Contra Costa County household hazardous waste collection facilities to accept and qualified small businesses to transport up to 100 kilograms (220 pounds/27 gallons) of hazardous waste at one time per month without meeting registered transporter or hazardous waste manifest requirements. Standards exempted are contained in HSC, sections 25163(a) and 25160 respectively. Transported waste is shipped in accordance with federal Department of Transportation, California Highway Patrol, and California Vehicle Code requirements. For additional information contact Cheryl Closson of at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (916) 324-6564.

HOUSEHOLD HAZARDOUS WASTE UNIT REGULATORY AND PROGRAM DEVELOPMENT DIVISION PUBLIC NOTICE FOR VARIANCE ISSUANCE

On September 12, 2003, the Regulatory and Programs Development Division of the Department of Toxic Substances Control (DTSC) issued a three-year manifest and transportation variance to Modoc County. Authority for this action is contained in Health and Safety Code, section 25143. The variance authorizes Modoc County household hazardous waste collection program to transfer household and conditionally exempt small quantity generator wastes in quantities up to 100 kg per load from collection and loadcheck sites to a consolidation site using county vehicles and a bill-of-lading (shipping paper) in lieu of a hazardous waste manifest. This shipping paper includes federal Department of Transportation shipping names and the wastes are packaged and transported in accordance with federal Department of Transportation, California Highway Patrol, and California Vehicle Code requirements. Manifest and transportation standards exempted are contained in Health and Safety Code, sections 25160 and 25163. For additional information contact Cheryl Closson at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (916) 324-6564.

HOUSEHOLD HAZARDOUS WASTE UNIT REGULATORY AND PROGRAM DEVELOPMENT DIVISION PUBLIC NOTICE FOR VARIANCE ISSUANCE

On September 12, 2003, the Regulatory and Program Development Division of the Department of Toxic Substances Control (DTSC) issued a three-year manifest variance renewal to Riverside County. Authority for this action is contained in Health and Safety Code, section 25143. The variance authorizes the Riverside County household hazardous waste collection program to transfer household and conditionally exempt small quantity generator wastes from collection and loadcheck sites to a consolidation site using a registered hauler vehicle and a bill-of-lading (shipping paper) in lieu of a hazardous waste manifest. This shipping paper additionally lists federal Department of Transportation shipping names and the wastes are packaged and transported in accordance with federal Department of Transportation, California Highway Patrol, and California Vehicle Code requirements. Manifest standards exempted are contained in Health and Safety Code, section 25160. For additional information contact Cheryl Closson at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (916) 324-6564.

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

NOTICE TO INTERESTED PARTIES

**ANNOUNCEMENT OF SECOND PUBLIC
COMMENT PERIOD**

**SECOND DRAFT OF REPORT EVALUATION OF
POTENTIAL HEALTH EFFECTS OF EATING
FISH FROM BLACK BUTTE RESERVOIR
(GLENN AND TEHAMA COUNTIES):
GUIDELINES FOR SPORT FISH CONSUMPTION**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) previously made available the first draft of the report entitled Evaluation of Potential Health Effects of Eating Fish from Black Butte Reservoir (Glenn and Tehama Counties): Guidelines for Sport Fish Consumption. The report represents an evaluation of findings on mercury in fish from Black Butte Reservoir, and provides guidelines for limiting consumption of fish from Black Butte Reservoir, Glenn and Tehama Counties. A one-day public workshop was held at the Glenn County Courthouse to discuss the scientific basis for the report and consumption guidelines, and to receive public comment. OEHHA follows the requirements set forth in Health and Safety Code, Section 57003(a), for conducting the workshop and receiving public input.

Following the workshop and public comment period, the draft document has been revised to respond to comments received. OEHHA is making the revised draft document available for a 30-day public review and comment period at the OEHHA Web site <http://www.oehha.ca.gov>. A copy of the report is also available by calling (916) 327-7319. Following the second comment period OEHHA will finalize the report and advisory in response to comments received. It will be posted on the OEHHA Web site along with responses to major comments.

Written comments on the second draft report may be submitted to the address below. Comments must be postmarked (if sent by mail) or received by OEHHA (if hand-delivered or sent by FAX) by close of business on November 7, 2003. If you would like to receive further information on this announcement, or have questions, please contact Dr. Robert Brodberg using the information provided below.

Dr. Robert K. Brodberg
California Environmental Protection Agency
Office of Environmental Health Hazard Assessment
Pesticide and Environmental Toxicology Section

P.O. Box 4010
Sacramento, California 95812-4010
Phone: (916) 323-4763
Fax: (916) 327-7320

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

NOTICE TO INTERESTED PARTIES

**ANNOUNCEMENT OF SECOND PUBLIC
COMMENT PERIOD**

**SECOND DRAFT OF REPORT EVALUATION OF
POTENTIAL HEALTH EFFECTS OF EATING
FISH FROM SELECTED WATER BODIES IN
THE NORTHERN SIERRA NEVADA FOOTHILLS
(NEVADA, PLACER AND YUBA COUNTIES):
GUIDELINES FOR SPORT FISH CONSUMPTION**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) previously made available the first draft of the report entitled Evaluation of Potential Health Effects of Eating Fish from Selected Water Bodies in the Northern Sierra Nevada Foothills (Nevada, Placer, and Yuba Counties): Guidelines for Sport Fish Consumption. The report represents an evaluation of findings on mercury in fish from Lake Englebright, Lake Combie, Camp Far West Reservoir, Rollins Reservoir, Scotts Flat Reservoir, and sections of the Bear River, South Yuba River and Deer Creek, and provides guidelines for limiting consumption of fish from these water bodies. A one-day public workshop was held at the Nevada Irrigation District office (Grass Valley) to discuss the scientific basis for the report and consumption guidelines, and to receive public comment. OEHHA follows the requirements set forth in Health and Safety Code, Section 57003(a), for conducting the workshop and receiving public input.

Following the workshop and public comment period, the draft document has been revised to respond to comments received. OEHHA is making the revised draft document available for a 30-day public review and comment period at the OEHHA Web site <http://www.oehha.ca.gov>. A copy of the report is also available by calling (916) 327-7319. Following the second comment period OEHHA will finalize the report and advisory in response to comments received. It will be posted on the OEHHA Web site along with responses to major comments.

Written comments on the second draft report may be submitted to the address below. Comments must be postmarked (if sent by mail) or received by OEHHA (if hand-delivered or sent by FAX) by close of business on November 7, 2003. If you would like to

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RULEMAKING PETITION DECISIONS

DEPARTMENT OF CORRECTIONS

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections

PETITIONER

Paul Hebbe

AUTHORITY

Under authority established in Penal Code (PC) Section 5058 the Director may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

CONTACT PERSON

Please direct any inquiries regarding this action to Rick Grenz, Chief, Regulation and Policy Management Branch, California Department of Corrections, PO Box 942883, Sacramento, CA 94283-0001, or telephone (916) 322-9702.

AVAILABILITY OF PETITION

The petition for amendment of the regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner requests the Department of Corrections (CDC) to amend the California Code of Regulations (CCR), Title 15, Section 3000 to define "essential functions" to include the laundry exchange and to adopt regulations for Section 3031(c) to include

weekly laundry and linen exchanges as essential functions. Petitioner contends that the current Title 15 definition of lockdown, which uses the phrase "essential functions", is vague and ambiguous and because of this his basic human needs (including adequate hygiene) are not met during a lockdown and/or state of emergency.

DEPARTMENT DECISION

The Director of Corrections denies the petition to amend CCR, Title 15, Sections 3000 and 3031(c). When the normal operation of an institution is suspended, one cannot expect inmate services to continue without interruption. The CCR, Title 15, Sections 3270, 3380, and 3383 provide each warden with the authority to suspend normal operations of non-essential programs.

Pursuant to CCR Section 3060, "Institutions will provide the means for all inmates to keep themselves and their living quarters clean and practice good health habits." Therefore, even during a lockdown or a state of emergency, all inmates still have access to soap and water and are able to hand wash clothes during the time that all non-essential functions (including the laundry exchange) are suspended.

Inasmuch as the petitioner's suggested changes are not necessary, the petition is denied.

PROPOSITION 65

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES

Request for Information on Chloroform (CAS# 67-66-3), a Chemical to be Considered by OEHHHA's Science Advisory Board's Developmental and Reproductive Toxicant (DART) Identification Committee

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

The Developmental and Reproductive Toxicant (DART) Identification Committee of OEHHHA's Science Advisory Board advises and assists OEHHHA in compiling the list of chemicals known to the State to

cause reproductive toxicity. This list is mandated by Health and Safety Code Section 25249.8. The DART Identification Committee serves as the State's qualified experts for determining whether a chemical has been clearly shown through scientifically valid testing according to generally accepted principles to cause reproductive toxicity and, thus, will be added to the Proposition 65 list.

OEHHA has developed a procedure for prioritizing candidate chemicals for consideration under Proposition 65 by the State's qualified experts. The process is described in "Procedure for Prioritizing Candidate Chemicals for Consideration Under Proposition 65 by the State's Qualified Experts," May 1997, (Prioritization Policy) and is available on the Internet at <http://www.oehha.ca.gov/prop65/pdf/priodoc.pdf>. On September 12, 1997, OEHHA released for public comment a draft priority assignment and draft data summary for chloroform with respect to its potential to cause reproductive toxicity.

Chloroform has now been assigned a final priority of "High". In accordance with OEHHA's Prioritization Policy, OEHHA will review the available reproductive toxicity literature and data on chloroform, and prepare a summary of the information in a document referred to as a hazard identification document.

The DART Identification Committee will consider OEHHA's hazard identification document regarding chloroform before determining whether or not to add this chemical to the list of chemicals known to the State to cause reproductive toxicity. Interested parties or members of the public wishing to provide information relevant to an assessment of the reproductive and developmental toxicity of chloroform should forward such information to the address given below. The publication of this notice marks the start of a 60-day data call-in period for such information. This period ends on **Tuesday, December 2, 2003**. The information received during this data call-in period will be reviewed and considered by OEHHA as it develops the reproductive and developmental toxicity hazard identification document on chloroform.

OEHHA welcomes public participation and public input as part of these scientific assessments. If there is sufficient public interest, a public workshop or other public forum will be held to encourage scientific dialogue prior to completion of the Hazard Identification Document.

Notification of the availability of the hazard identification document and of the time, date, location, and agenda of any workshop and of the meeting of the DART Identification Committee where chloroform will be discussed will be provided in future notices published in the California Regulatory Notice Register and posted on OEHHA's Home Page at

<http://www.oehha.ca.gov>. It is anticipated that the hazard identification document will be made available for a 60-day public comment period prior to the DART Identification Committee meeting at which chloroform will be considered.

Relevant information on chloroform should be sent in triplicate by mail or fax to:

Cynthia Oshita
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation
1001 I Street, 19th Floor
P.O. Box 4010
Sacramento, CA 95812-4010
Fax (916) 323-8803
Telephone (916) 445-6900

Relevant information may also be delivered in person or by courier to the above address.

In order to be considered, the relevant information must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered or sent by fax) by 5:00 pm on **Tuesday, December 2, 2003**.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

CALIFORNIA HORSE RACING BOARD Superfecta

This action amends the superfecta rule by eliminating the existing limitation that requires refund of the entire pool if less than five horses finish the race.

Title 4
California Code of Regulations
AMEND: 1979.1
Filed 09/18/03
Effective 10/18/03
Agency Contact: Harold Coburn (916) 263-6397

CALIFORNIA HORSE RACING BOARD Backstretch Worker Housing and Fire Regulations

This Certificate of Compliance regulatory action establishes standards for backstretch worker housing. (Previous OAL file # 02-0430-02E)

Title 4
California Code of Regulations
ADOPT: 2100, 2101, 2102, 2103, 2104, 2105
AMEND: 1928
Filed 09/23/03
Effective 09/23/03
Agency Contact: Harold Coburn (916) 263-6397

DEPARTMENT OF HEALTH SERVICES
Raw Oysters

In this regulatory action, the Department of Health Services revises its regulations pertaining to the sale of raw oysters. The regulations include provisions relating to labeling, written warnings, prohibitions on dealers and retail food facilities accepting raw oysters under specified conditions, and requirements for a raw oyster dealer to receive a "verification" from the Department that the raw oysters supplied by the dealer are subjected to an "oyster treatment process."

Title 17
California Code of Regulations
ADOPT: 13676 AMEND: 13675
Filed 09/23/03
Effective 09/23/03
Agency Contact:
Charles E. Smith (916) 440-7690

**DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT**
Predevelopment Loan Program (PDLP)

This action amends existing provisions governing the Predevelopment Loan Program (PDLP) in order to conform to changes in applicable statutes made by AB 1359 (Stats. 2001, Chap. 395).

Title 25
California Code of Regulations
ADOPT: 7003 AMEND: 7000, 7002, 7004, 7005, 7006, 7008, 7012, 7016 REPEAL: 7010, 7014, 7018
Filed 09/19/03
Effective 10/19/03
Agency Contact: Lenora Frazier (916) 323-4475

DEPARTMENT OF MANAGED HEALTH CARE
Civil Penalties

The regulatory action sets forth civil penalties for purposes of Health and Safety Code section 1387. (Prior OAL file 03-0409-03S; Department of Managed Health Care file 2001-Reg 22.)

Title 28
California Code of Regulations
ADOPT: 1300.87
Filed 09/18/03
Effective 09/18/03
Agency Contact:
Lyn Amor Macaraeg (916) 322-9727

DEPARTMENT OF MANAGED HEALTH CARE
Mental Health Parity

This regulatory action deals with mental health parity.

Title 28
California Code of Regulations
ADOPT: 1300.74.72
Filed 09/23/03
Effective 10/23/03
Agency Contact:
Lyn Amor Macaraeg (916) 322-9727

**DEPARTMENT OF TOXIC SUBSTANCES
CONTROL**
Lab Pack Management at SHWCCAFs

This action amends existing requirements to allow K-12 school science laboratory waste lab packs to be reopened and repackaged at a School Hazardous Waste Collection, Consolidation, and Accumulation Facility (SHWCCAF).

Title 22
California Code of Regulations
AMEND: 67450.42
Filed 09/23/03
Effective 09/23/03
Agency Contact: Joan Ferber (916) 322-6409

FISH AND GAME COMMISSION
Trap Destruction Devices

This action delays a planned change in the standards for devices incorporated into fish traps that permit fish and crabs to escape after the trap has been lost, in order to allow continued use of the currently authorized traps and more time to study the adequacy of such devices in facilitating escape from lost traps.

Title 14
California Code of Regulations
AMEND: 180.2
Filed 09/18/03
Effective 10/18/03
Agency Contact: John M. Duffy (916) 653-4899

**OFFICE OF STATEWIDE HEALTH PLANNING
AND DEVELOPMENT**
MIRCal Online Transmission

This regulatory action adopts the standards for the electronic submission of required discharge data from hospitals.

Title 22
California Code of Regulations
ADOPT: 97244, 97245, 97246, 97247, 97248, 97249, 97250 AMEND: 97045, 97210, 97211, 97212, 97213, 97215, 97241 REPEAL: 97214, 97239, 97242, 97243

Filed 09/23/03
Effective 09/22/03
Agency Contact:
Candace L. Diamond (916) 324-2712

STATE WATER RESOURCES CONTROL BOARD
Review by State Board of Action or Failure to Act by
Regional Board

This rulemaking action revises procedural regulations for a review by the State Water Resources Control Board of a regional board action or failure to act, as authorized by Water Code Section 13320.

Title 23
California Code of Regulations
ADOPT: 2050.6 AMEND: 2050, 2050.5, 2051, 2052, 2053, 2064, 2066, 2067
Filed 09/23/03
Effective 10/23/03
Agency Contact: Marleigh Wood (916) 341-5169

SUPERINTENDENT OF PUBLIC INSTRUCTION
Desired Results—Child Care and Development

The regulatory action deals with Desired Results for Child Care and Development Programs. (Prior OAL Files 02-0710-02S and 03-0312-02SR.)

Title 5
California Code of Regulations
ADOPT: 18270.5, 18280, 18281 AMEND: 18023, 18272, 18273, 18274, 18275, 18279
Filed 09/23/03
Effective 09/23/03
Agency Contact: Debra Strain

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN MAY 21, 2003
TO SEPTEMBER 24, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

07/01/03 AMEND: 1038

Title 2

09/15/03 ADOPT: 18951
09/12/03 AMEND: 37000

08/29/03 AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153

08/28/03

08/25/03 ADOPT: 1859.71.4, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83, 1859.125, 1859.125.1, 1859.145

08/18/03 AMEND: 599.515

08/14/03 ADOPT: 18531.5

08/13/03 AMEND: 41000

08/01/03 ADOPT: 22100, 22110, 22120, 22130

07/29/03 AMEND: 18404.1

07/14/03 AMEND: 56800

07/14/03 AMEND: Chapter 55, Section 54400

07/14/03 AMEND: 649.11

07/07/03 ADOPT: 1859.77.3 AMEND: 1859.2, 1859.77.2

06/19/03 AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, 1859.145

06/16/03 ADOPT: 18530.2

06/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 859.103, 1859.106, 1859.145.1

06/12/03 ADOPT: 18329.5

06/12/03 AMEND: 1859.77.2

06/12/03 AMEND: 1555

06/10/03 ADOPT: 18702.5 AMEND: 18702, 18702.1

06/04/03 ADOPT: 649.23, 649.24, 649.25

Title 3

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